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ATTORNEYS FOR PERMIT APPLICANT  
BROOK MINING COMPANY, LLC

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

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

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**BROOK MINING COMPANY, LLC’S FINDINGS OF FACT  
AND CONCLUSIONS OF LAW**

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**I. INTRODUCTION**

This case should decide a single question: did the Department of Environmental Quality (DEQ) correctly decide Brook Mine’s (Brook) permit application was complete and non-deficient? The Council has two methods for answering this question: 1) start from scratch and compare the application and law; or 2) rely on DEQ’s findings from its completeness and deficiency review (commonly known as a technical review) of Brook’s permit application. While both lead to the same result, the Council should rely on DEQ’s findings for four reasons.

First, DEQ is unbiased. It has nothing to gain should Brook’s permit application move forward. But the objectors have different motives. Big Horn Coal (BHC) wants money, offering not to oppose Brook’s application if Brook paid BHC approximately \$29 million. (Tr. Vol. IV, 876). Mary and David Fisher (Fishers) do not want a mine near them because it could affect their

property's value. (Tr. Vol. V, 1181-82). Powder River Basin Resource Council (PRBRC) does not want any mining near Sheridan. (*Id.*, 1123). As a result, the objectors did not objectively analyze Brook's permit application.

Second, DEQ has the most relevant experience and expertise for reviewing Brook's permit application. The DEQ personnel who reviewed Brook's permit application have reviewed dozens of permits, spent years working on the application, submitted hundreds of comments, and worked with Brook to ensure the permit application meets Wyoming law. (DEQ Ex. 34; Tr. Vol. I, 40-42, 45-46; Tr. Vol. II, 393-94; Tr. Vol. III, 461-62, 581). Dr. Muthu Kuchanur is a nationally recognized expert who worked as a consultant and who has designed, developed, applied, and evaluated groundwater models like those used in Brook's permit application. Doug Emme is also a nationally recognized expert on blasting who has been DEQ's blasting program principal for over 27 years. (Tr. Vol. III, 578-80). He also assisted in developing DEQ's bonding guideline. (*Id.*, 579). But PRBRC's experts, Dr. Marino and Mr. Wireman, have never attempted to draft a coal mine permit application in Wyoming. (Tr. Vol. VI 1254, 1263, 1403-05). Mr. Wireman does not hold a professional license in any state. Neither Mr. Wireman nor Dr. Marino are experts on the requirements for a permit application to be complete and non-deficient under Wyoming law. (*Id.*, 1254, 1258-60, 1403-05).

Third, DEQ applied the correct standard in reviewing Brook's permit application. DEQ applied the Environmental Quality Act, the corresponding regulations, and DEQ guidelines to determine Brook's application was complete and non-deficient. DEQ balanced the regulations and the necessary science. (Tr. Vol. VII, 1490). But objectors, nearby landowners, experts or otherwise, did not. They spent merely days, hours, or no time at all reviewing Brook's permit application. (Tr. Vol. IV, 887-88, Vol. V, 1077, 1098-1102, 1107-08, 1122-23, 1126; Vol. VI,

1428). For example, Ms. Collins did not look at the permit application until the beginning of the hearing in Sheridan. (Tr. Vol. V, 1077-78). This limited review often meant they did not consult statutes or regulations. For example, BHC did not review the statutory or regulatory requirements for a permit application. (Tr. Vol. IV, 885-89). Still, the objectors agreed that if a permit application complies with all Wyoming statutes and Wyoming regulations, the permit should issue. (*Id.*, 894, Vol. V, 1103).

Fourth, the objectors' expert testimony has fatal flaws. Dr. Marino assumed designs and extraction ratios using generalized diagrams that did not reflect Brook's actual design found in Brook's Mine Plan. (*See* DEQ Ex. 12-035; Tr. Vol. VI, 1274-77). He also did not take into account that Brook committed in its permit application to: 1) do site specific testing and engineering before starting to mine; and 2) submit a Mine Safety Health Administration (MSHA) ground control plan engineered to prevent short and long-term subsidence. (Tr. Vol. VI, 1265-69). Mr. Wireman did not evaluate all of the data in the permit application and did not evaluate external data available in the area. (*Id.*, 1404-06). He also doubted the data and statements in the permit application without studying whether his doubts were correct. (*Id.*, 1405-06). For example, he doubted Brook's groundwater model was accurate; but he did not run the model. (*Id.*, 1414-16). Mr. Gerlach's opinions relied on a 15 year-old groundwater restoration demonstration his company drafted for BHC. (Tr. Vol. IV, 972-73). That document, however, uses old data not designed to predict the future consequences of mining in the area. (Tr. Vol. VII, 1464-66).

The Council should also weigh DEQ's enforcement authority. Brook has committed to: 1) replacing water quantity and quality if its mine should affect domestic water wells; 2) do site specific studies and engineering to prevent subsidence; and 3) remediate subsidence if it occurs.

(DEQ Ex. 34-014-15; DEQ Ex. 5-017-18; Tr. Vol. III, 659-60, 673-76). These commitments directly address specific objections, and DEQ can enforce all of them because they are in the permit application. (Tr. Vol. II, 230, 349, 371-72).

Contrary to what the objectors suggest, this case does not require the Council to decide if Wyoming's permit application process should be more stringent, the public should have more input on the permitting process, or if DEQ should have held an informal conference. The case is also not about imposing conditions on Brook's permit application. The Council does not have any specific statutory authority to impose conditions on a permit application. Even if it did, many of the conditions the objectors have requested require Brook to access land the objectors own, which invites disputes about when Brook can access the property or how much it will cost to do so.<sup>1</sup> (Tr. Vol. IV, 879).

Therefore, Brook proposes the Council adopt the following findings of fact and conclusions of law.

## **II. FINDINGS OF FACT**

### **A. Brook's Permit Application**

1. On October 31, 2014, Brook submitted to DEQ's Land Quality Division (LQD) an application for a permit to mine coal. Brook's permit application proposed to mine coal in an area northwest of Sheridan, Wyoming. (DEQ Exs. 1-13, Tr. Vol. I, 51-52).

2. Brook's permit application consisted of 12 volumes filled with documents, maps, data, and other information to address applicable statutes, rules and regulations. (DEQ Exs. 1-13,

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<sup>1</sup> If the Council imposes conditions that require Brook or even DEQ to access property Brook does not own, those conditions should apply only if the property owner grants access. Should the property owner refuse, then the Council should not require Brook or DEQ to follow those conditions. Although Brook has the use of the surface and surface access from the rights reserved in its 1954 Deed, the Council knows that many landowners ignore those rights.

Tr. Vol. I, 43-44, 52, 57-58). These volumes mirror the structure and documents in DEQ's completeness criteria. (Tr. Vol. VII, 1540). The completeness criteria lists "what is required for a permit application to mine coal in the state of Wyoming." (*Id.*, Brook Ex. 14). The document "cross-references all of the requirements to Wyoming, statutes, rules and regulations." (*Id.*).

3. Volumes I, IA, and II are the combined adjudication file in the permit application. (DEQ Exs. 1, 2, 3). The adjudication file contains information on the legal aspects of land and mineral ownership, water rights, rights of way, legal descriptions, and legal relationships. (*Id.*). The second volume of the adjudication file contains ownership maps, right-of-way maps, etc. Tr. Vol. I, 60-62, DEQ Exs. 1, 3. The adjudication file also contains an estimate of the surface damage bond for BHC's surface ownership. (Tr. Vol. I, 66, DEQ Ex. 1-066-101).

4. Appendix A of the adjudication file contains contact information and maps relating to surface and mineral rights holders within the proposed permit area, including coal. (Tr. Vol. I, 68, DEQ Ex. 1-232).

5. Appendix B of the adjudication file contains the names and addresses of surface and mineral rights owners adjacent to the permit boundary within one-half mile. (Tr. Vol. I, 69, DEQ Ex. 1-264).

6. Appendix C of the adjudication file contains the legal description of lands contained within the permit application area, including survey plats and maps. (Tr. Vol. I, 70, DEQ Ex. 1-447).

7. Appendix E of the adjudication file contains lands mining will affect, areas of previous disturbance by surface and underground mining, roads, utility lines, pipelines, rights of way, easements, names and last known addresses of present surface owners, and the legal

description of locations of buildings within and adjacent to the permit area. (Tr. Vol. I, 72, DEQ Ex. 1-540).

8. The adjudication volumes also contain landowner consent forms and this Council's order in lieu of consent issued on November 17, 2016. (DEQ Ex. 2).

9. Volume III contains appendices D1 through D4. (DEQ Ex. 4).

10. Appendix D1 is titled "Land use." (DEQ Ex. 4). The appendix explains the general use of the land within the permit application boundary from past to present, which includes grazing land, developed water resources, industrial, commercial, recreational, and residential. (Tr. Vol. I, 82-83, DEQ Ex. 4-008-11). The appendix also explains the areas any agency has designated as unsuitable for mining and whether previous mines exist within the area. (DEQ Ex. 4-016). The appendix also has tables, figures, and exhibits that supplement the text and provide more information. (*Id.*, 4-020-41).

11. DEQ reviewed Appendix D1 and found it complied with the applicable statutes and regulations. (Tr. Vol. I, 52, 60, Tr. Vol II, 196-97, 411).

12. Appendix D2, is titled "History." (DEQ Ex. 4). This appendix discusses the history of mining in the Brook Mine area, sites on the National Register of Historic Places, and the area around the proposed Brook mine. (*Id.*, 4-046-56). The appendix also has tables, figures, and exhibits that supplement the text and provide more information. (*Id.*, 4-059-64).

13. DEQ reviewed Appendix D2 and found it complied with the applicable statutes and regulations. (Tr. Vol. I, 52, 60, Tr. Vol II, 196-97, 411).

14. Appendix D3 is titled "Archeological and Paleontological Resources." (DEQ Ex. 4). This appendix contains little information because cultural and paleontological surveys "are not required when there's private surface and private mineral owners." (Tr. Vol. I, 85). The

appendix also contains a 2012 letter from DEQ stating the same. (DEQ Ex. 4-074-75). DEQ, however, did coordinate with the State's Historic Preservation Office, who had no comments. (Tr. Vol. I, 85-86).

15. In addition to this appendix, Brook's Mine Plan, found in a different volume, states Brook will stop mining in any areas where cultural or paleontological resources are discovered. (*Id.*, 86).

16. DEQ reviewed Appendix D3 and found it complied with the applicable statutes and regulations. (*Id.*, 85-86).

17. Appendix D4 is titled "Climatology." This appendix discusses the regional climatology around the proposed Brook Mine. (DEQ Ex. 4). This includes information on temperature, wind patterns, precipitation, evaporation, relative humidity, cooling, heating, and growing degree days. (*Id.*, 4-080-88).

18. The appendix also has tables, figures, and exhibits that supplement the text and provide more information. (DEQ Ex. 4-091-112). The additional information includes data about meteorological stations, regional annual and monthly temperature statistics, average monthly wind speeds, regional and annual precipitation. (*Id.*).

19. DEQ reviewed Appendix D4 and found it complied with the applicable statutes and regulations. (Tr. Vol. I, 52, 60, Tr. Vol II, 196-97, 411).

20. Volume IV of Brook's permit application contains Appendix D5, titled "Topography, Geology and Overburden Assessment." (DEQ Ex. 5). This appendix discusses topography, slope assessment, regional geology, geology of the mining area, and overburden assessment. (*Id.*, 5-006-23). The accompanying tables, figures, exhibits, and addenda provide data and information on coal quality, criteria to establish overburden suitability, geologic

structures, pre-mine slope analysis, surficial geology, lithologic and geophysical logs, geologic cross-sections, structure and isopach maps, overburden sample analysis. (*Id.*, 5-026-295).

21. In preparing this appendix, DEQ and Brook collaborated on the location of drill holes for assessing geology. (Tr. Vol. I, 92-93). Brook was unable to sample certain areas because of terrain, but the existing samples “were close enough together that [DEQ] could extrapolate...into that area for now.” (*Id.*, 93).

22. DEQ reviewed Appendix D5 and found it complied with the applicable statutes and regulations. (Tr. Vol. I, 92-93).

23. Volume V of Brook’s permit application contains Appendix D6 titled “Hydrology.” (DEQ Ex. 6). This appendix describes surface water, flood studies, surface water monitoring, surface water quality and quantity, groundwater, regional hydrogeology, baseline monitoring, groundwater testing, groundwater rights, and Brook’s groundwater model. (*Id.*, 6-005-34). The appendix also has tables, figures, exhibits, and addenda that provide additional data and information. (*Id.*, 6-037-553). This includes Brook’s groundwater model and input data for the model. (DEQ Ex. 12-183-265, Tr. Vol. III, 460-63). The data and information in this appendix showed the groundwater aquifers within about 85% of Brook’s proposed permit area is dry. (Tr. Vol. I, 95-96). The groundwater model also showed that any groundwater Brook affects would recharge within years of Brook ending its operations. (Tr. Vol. VII, 1496).

24. DEQ reviewed Appendix D6 and found it complied with the applicable statutes and regulations. (Tr. Vol. III, 496).

25. Volume VI of Brook’s permit application contains Appendix D7 titled “Soil Resources Assessment.” (DEQ Ex. 7). This appendix describes the methodology that Brook used to sample soils within the proposed permit area. (*Id.*, 7-007-14). It also describes the results of



the soil sampling, which includes soil information, soil suitability, salvage depth, and maps with soil unit descriptions. (*Id.*, 7-014-42). The appendix also includes tables, figures, exhibits, and addenda that provide additional information and data, including Brook’s sampling protocol and laboratory results. (*Id.*, 7-043-114).

26. DEQ reviewed Appendix D7 and found it complied with the applicable statutes and regulations. (Tr. Vol. I, 52, 60, Tr. Vol II, 196-97, 411).

27. Volume VII of Brook’s permit application contains Appendix D8 titled “Vegetation Inventory.” (DEQ Ex. 8). This appendix describes the methodology that Brook used to survey vegetation within the proposed permit area. (*Id.*, 8-005-11). It also describes the results of the survey. (*Id.*, 8-11). The appendix includes tables, exhibits, and addenda with additional information and data. (*Id.*, 8-12-452).

28. DEQ reviewed Appendix D8 and found it complied with the applicable statutes and regulations. (Tr. Vol. I, 52, 60, Tr. Vol II, 196-97, 411).

29. Volume VIII of Brook’s permit application contains Appendix D9 titled “Wildlife.” (DEQ Ex. 9). This appendix describes Brook’s wildlife studies, methods, and results. (*Id.*, 9-005-10). It also includes tables, exhibits, and addenda that describe baseline wildlife inventories and species lists. (*Id.*, 9-011-139).

30. DEQ reviewed Appendix D9 and found it complied with the applicable statutes and regulations. (Tr. Vol. I, 52, 60, Tr. Vol II, 196-97).

31. Volume IX of Brook’s permit application contains Appendix D10 titled “Wetlands.” (DEQ Ex. 10). This appendix describes the methodology that Brook used to inventory wetlands within the proposed permit boundary and subsequent results. (*Id.*, 10-005-9).

The appendix also has tables, exhibits, and addenda that provide additional information and baseline data. (*Id.*, 10-010-279).

32. DEQ reviewed this appendix and found it complied with the applicable statutes and regulations. (Tr. Vol. I, 52, 60, Tr. Vol II, 196-97).

33. Volume X of Brook's permit application contains Appendix D11 titled "Alluvial Valley Floors." (DEQ Ex. 11). This appendix describes Brook's analysis of potential alluvial valley floors within the proposed permit boundary. (*Id.*, 11-006-12). The appendix explains stream laid deposits, water quantity, sub-irrigation, natural and artificial flood irrigation, water quality, and then determines the potential alluvial valley floors. (*Id.*, 11-012-18). The appendix also has tables, figures, exhibits, and addenda that provide additional information and data, including geologic cross-sections, potential and declared alluvial valley floors, isopach maps, prior state decision documents, and monitor well logs. (*Id.*, 11-024-313).

34. Based on the findings in Brook's permit application, DEQ conducted their assessment of potential alluvial valley floors in the area in and around where Brook proposes to mine. (Tr. Vol. I, 108-10). DEQ's assessment led it to designate one alluvial valley floor near the proposed Brook mine. (*Id.*, 109-10). But the proposed Brook mine will not disturb or mine through any designated alluvial valley floor. (*Id.*, 112-13). Even so, Brook's permit application states that Brook will halt mining should it enter a possible alluvial valley floor and allow DEQ to determine if an alluvial valley floor exists. (*Id.*, 116). Brook will also place monitor wells in areas designated as potential alluvial valley floors. (Tr. Vol. VII, 1489).

35. DEQ reviewed Appendix D11 and found it complied with the applicable statutes and regulations. (Tr. Vol. II, 156).

36. Volume XI of Brook's permit application contains Brook's Mine Plan. (DEQ Ex. 12). Brook's Mine Plan also contains a general description of mining operations (MP.1); mine facilities (MP.2); tonnage (MP.2.2, MP.6.1); roads, railroads and other transportation systems (MP.3); mining methods, schedules, and assessments (MP.4); mining hydrology (MP.5); probable hydrologic impacts (MP.6); operational monitoring program (MP.7); water use (MP.8); reclamation of exploration holes and wells (MP.9); refuse disposal (MP.10); signs, markers and buffer zones (MP.12); blasting plan and schedule (MP.14); surface mining activities near underground mines (MP.15); protection of other resources, structures and surfaces (MP.16); existing structures facilities operations (MP.17); plan to minimize adverse impacts on fish and wildlife (MP.18); protection of historical and archaeological resources (MP.19); underground mining (MP.20); auger mining (MP.21); dual permitted areas (MP.22); plan in cases of temporary cessation of operations (MP.23); protection of public safety, human or animal life, property, and the surface owner's ongoing operation (MP.24); alluvial valley floors (MP.25); separation and replacement of soils for prime farmlands (MP.26); request for variance from environmental performance standards (MP.27); and references (MP.28). (DEQ Ex. 12-001-372).

37. Brook's Mine Plan describes the proposed highwall mining method. (DEQ Ex. 12-016-18). The highwall mining process begins with a trench, a pit, or a box cut to expose the coal seam. (Tr. Vol. III, 654, Tr. Vol. I, 51-52, DEQ Ex. 12-121). The operator then uses a machine to extract coal in panels ranging between 1,500 and 2,000 feet in length. (Tr. Vol. III, 654-55, 665-66). Each panel has pillars that will minimize the potential for subsidence during mining. (Tr. Vol. I, 51, DEQ Ex. 12-121. Tr. Vol. I, 51.) During mining, the native topography and vegetation remain except for the excavated trench. (Tr. Vol. III, 655). In total, a trench will last only three years before getting reclaimed. (Tr. Vol. II, 397).

38. The Mine Plan contains a fire control and prevention plan for surface and subsurface operations. (Tr. Vol. II, 159, DEQ Ex. 12-314). The fire control and prevention plan establishes a mitigation system in the event of any type of fire during mining or other operations. (Tr. Vol. II, 159-60, DEQ Ex. 12-314). MSHA will regulate the ground control program for fires or other safety related items at the mine. (Tr. Vol. II, 160).

39. Brook's Mine Plan also addresses subsidence in three ways. First, addenda MP-6 contains Brook's subsidence control plan that analyzes potential subsidence at the mine. (Tr. Vol. II, 162, DEQ Ex. 12-319). The subsidence control plan discusses previous mining activity, Brook's plan to monitor and assess subsidence, and Brook's plan to control and remediate any subsidence that occurs. (DEQ Ex. 12-320-27). Cardno MMA prepared the subsidence control plan because it had "done a lot of work for highwall miner operations in the East" and knew people "that manufacture and operate the highwall miner systems very well." (Tr. Vol. II, 163; Tr. Vol. III 666; Tr. Vol. IV, 817).

40. In addition to the subsidence control plan, Brook has committed to developing the required MSHA ground control plan before it begins mining. (Tr. Vol. III, 662-65). The ground control plan will sample, test, design, and engineer each mine panel so that it meets MSHA's safety factor and creates both short and long-term subsidence protection. (Brook Ex. 10(d); Tr. Vol. II, 325-26; Tr. Vol. III, 662-63).

41. Brook's permit application states "[s]amples will be collected and strength testing will be conducted on those samples in order to satisfy the requirements of the MSHA ground control plan, which must be approved prior to mining. The future testing results and analysis in preparation of the MSHA ground control plan will be provided to WDEQ/LQD." (DEQ Ex. 5-018). The permit application also states that "[t]he results of the tensile strength tests will be

utilized to size both the web pillars and barrier pillars to achieve a factor of safety as set by the MSHA ground control plan to conduct mining and minimize the risk of subsidence.” (*Id.*)

42. Should subsidence occur, “mining operations have to cease immediately.” (Tr. Vol. II, 320). Brook then has to mitigate and repair any subsidence. (DEQ Ex. 12-318-33; Tr. Vol. II, 354-55).

43. Brook’s Mine Plan describes Brook’s blasting plan. (DEQ Ex. 12-335-38). The blasting plan describes Brook’s proposed blasting operations, explosive storage, and applicable laws and regulations. (DEQ 12-334-38). As part of its blasting plan, Brook does not intend to carry out any cast blasting or any blasting in its first year of operation. (Tr. Vol. III, 583, 589).

44. Brook’s Mine Plan discusses how Brook will control surface water. Brook’s plan will use reservoirs, diversions, ditches, and alternative sediment control measures to control surface water. (DEQ Ex. 12-055-59, 61). Brook will also monitor surface water sources. (DEQ Ex. 12-062-64).

45. Brook’s Mine Plan discusses groundwater, including domestic water wells. Brook has committed to replacing the quantity and quality of water sources lost because of Brook’s proposed operations. (DEQ Ex. 12-059-61). Brook will also conduct groundwater monitoring. (DEQ Ex. 12-064-65).

46. DEQ found the Mine Plan complied with the applicable statutes and regulations. (Tr. Vol. I, 45-46; Tr. Vol. II, 161-62).

47. Volume XII of Brook’s permit application contains Brook’s Reclamation Plan. (DEQ Ex. 13). The Reclamation Plan explains how reclamation will occur at the Brook Mine and how Brook will mitigate any modifications to overburden material, vegetation, and wildlife.

*Id.*, Tr. Vol. II, 175. When mining is complete and reclamation has finished, the Reclamation Plan states Brook will return the land use to at least equal or better than the original use. *Id.*

48. The Reclamation Plan describes: post-mining land use (RP.2); contouring plan for affected lands (RP.3); spoil replacement (RP.4); topsoil replacement (RP.5); revegetation practices (RP.6); wildlife restoration (RP.7); final hydrologic restoration (RP-8); wetland mitigation (RP.9); reestablishment of essential hydrologic functions and agricultural utility on alluvial valley floors (RP.10); reclamation of mine facilities, road, and railroads (RP.11); reclamation and bonding of dual permitted and license to mine areas (RP.12); reclamation schedule (RP.13); bond release (RP.14); underground mines (RP.15); reclamation costs (RP.16); and references (RP.17). (DEQ Ex. 13-014-30; Tr. Vol. II, 192-95). In dually permitted areas, Brook must reclaim any areas it disturbs even if that disturbance occurs within a dually permitted area. (DEQ Ex. 13-075; Tr. Vol. II, 184, 188-89).

49. DEQ found the Reclamation Plan complied with the applicable statutes and regulations. (Tr. Vol. I, 45-46).

50. With its permit application, Brook submitted an estimated reclamation bond in the approximate amount of \$370,000 to cover 30.8 acres of disturbance in year 0. (Tr. Vol. III, 590, DEQ Ex. 32). For the areas where Brook's operations will overlap with existing permits, like BHC, Brook's bond will cover all disturbance from Brook's operations. (Tr. Vol. II, 188-90)

#### **B. DEQ's review of Brook's permit application**

51. Once Brook submitted its permit application, DEQ conducted two stages of review set out in the Environmental Quality Act. First, DEQ conducted a completeness review. (Tr. Vol. I, 43-44). For this step, DEQ reviewed Brook's permit application to determine whether it is complete based on requirements set forth in the rules, regulations, and statutes. (*Id.*, 43).

52. After DEQ determined Brook's permit application was complete, DEQ notified Brook that the application was complete and DEQ had gone into the technical review process. By statute, the technical review process can take up to 150 days. (*Id.*, 56).

53. The technical review process analyzed "the entire document from front to back cover" and determined "how technically accurate [the application] can possibly be." (*Id.*, 44). "Technically accurate" or "technically adequate" means the permit application "has met all the statutes, rules, regulations, and providing [sic] all the information that [DEQ] needs to make assessment." (Tr. Vol. VII, 1504, 45-46, Tr. Vol. I, 59-60).

54. As a result, the technical review compared Brook's permit application to Wyoming statutes, DEQ regulations, and DEQ guidelines. (Tr. Vol. I, 56-58).

55. For its technical review, DEQ enlisted eleven in-house experts and four external experts, including Wyoming Game & Fish, US Game & Fish, US Army Corps of Engineers, and State Historic Preservation Office, to review the substance of Brook's permit application. (*Id.*, 47, 64, 85-86, 104). DEQ also applied standard mining and engineering principles, used modeling software to review the geology and hydrology aspects of the permit application, and relied on sources of data outside the permit application to verify Brook's findings. (*Id.*, 56-57; Tr. Vol. II 395-96, 410).

56. When reviewing subsidence information in the permit application, DEQ worked through computer models and utilized formulas developed by the Office of Surface Mining. DEQ also attended training on analyzing subsidence and requested more information on the model used in the subsidence control plan. (Tr. Vol. II, 164, 168). DEQ concluded the Brook mine would not subside. (*Id.*, 162, 169).

57. During the technical review process, DEQ sent comments to Brook informing it of deficiencies in the permit application. (Tr. Vol. I, 44-45). Brook then responded to DEQ's comments with additional information; Brook also modified its application when necessary. (*Id.*, 58-60). DEQ and Brook went through six rounds of comments and responses on Brook's permit application. (*Id.*, 58; DEQ Ex. 34).

58. Brook's responses and revisions to the permit application ultimately satisfied DEQ, leading it to determine Brook's application was "technically accurate" and suitable for publication. (*Id.*, 59-60, 161-62, 188).

59. After DEQ deemed Brook's application complete and without deficiency, it directed Brook to publish its permit application for public review and comment. In making this decision, DEQ had not yet issued a cumulative hydrologic impact assessment or the findings set out in Wyo. Stat. Ann. § 35-11-406(n).

60. Brook first published its permit application on December 27, 2016. (Tr. Vol. I, 53).

61. Between December 27, 2016 and January 27, 2017, DEQ received twenty public comments relating to Brook's permit application. Of those twenty comments, fourteen were objections to Brook's permit application.

62. Those objections challenged many parts of Brook's permit application, including Brook's analysis of alluvial valley floors, blasting, bonding, probable hydrologic consequences, reclamation, and subsidence. (BHC Ex. 3, Fisher Ex. 26, PRBRC Exs. 1, 2, 5, 9, 10)

63. Upon review of all objections, DEQ still found Brook's permit application met the applicable statutes and regulations. (Tr. Vol. II, 196-97). DEQ, however, will add two conditions to Brook's permit. First, DEQ will require Brook to remove the word adjudicated on



pages MP-38 (DEQ Ex. 12-052) and MP-48 (DEQ Ex. 12-052) of its Mine Plan and replace with “permitted.” (Tr. Vol. II, 290-91). Second, DEQ will adjust the location of surface monitoring stations to better capture data. (*Id.*, 430-31).

### **C. The Council’s Involvement**

64. The objectors requested that DEQ hold an informal conference to decide their objections. (BHC Ex. 3, Fisher Ex. 26, PRBRC Ex. 1). But the DEQ director exercised his discretion not to hold an informal conference and referred the matter to the Council. (February 22, 2017 Order of Dismissal, Docket 17-4801).

65. The Council originally scheduled a hearing on these objections for February 13, 2017 (Docket No. 17-4801). The Council also requested the parties brief whether the Council had jurisdiction to hear that case because no one had requested a contested case. After briefing, the Council dismissed that docket, ruling:

[u]nder Wyo. Stat. 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. Council, in this docket, is without authority to accept jurisdiction over the Brook Mine permit application through the referral from the Director.

(February 22, 2017 Order of Dismissal).

66. After this ruling, three of the objectors requested a contested case hearing: PRBRC (Docket No. 17-4804), BHC (Docket No. 17-4802), and Fishers (Docket No. 17-4803). The Council consolidated all dockets into Docket No. 17-4802.

67. Before the consolidated hearing, the Council set deadlines for discovery requests, naming of expert witnesses, and dispositive motions. (March 13, 2017 Order of Consolidation

and Schedule). The Council also set pre-hearing exhibit and witness disclosure dates and a hearing schedule and order. (*Id.*)

68. The Council conducted the first part of the hearing on May 22-26, 2017 in Sheridan, Wyoming. Unable to get all of the evidence in, the Council extended the hearing for two additional days on June 7-8, 2017 in Cheyenne, Wyoming (May 31, 2017 Order for Hearing). After those two days, the parties rested.

### **III. CONCLUSIONS OF LAW (DECISION ON THE APPLICATION)**

#### **A. The Scope of the Council's Decision**

1. The Wyoming Environmental Quality Act (the Act) created the Council and specifies its authority. *Amoco Prod. Co. v. State Bd. of Equalization*, 12 P.3d 668, 673 (Wyo. 2000). So the Council must exercise only the authority the Act granted to it. *Id.*; *Platte Dev. Co. v. State, Env'tl. Quality Council*, 966 P.2d 972, 975 (Wyo. 1998).

2. Under the Act, DEQ must evaluate a permit application and decide if it is complete. Wyo. Stat. Ann. § 35-11-406(e). Wyoming statutes define a complete application as “the application contains all the essential and necessary elements and is acceptable for further review for substance and compliance with the provisions of this chapter. Wyo. Stat. Ann. § 35-11-103(e)(xxii).

3. After informing a permit applicant that the application is complete, “the administrator shall review the application and unless the applicant requests a delay advise the applicant in writing within one hundred fifty (150) days from the date of determining the application is complete, that it is suitable for publication under subsection (j) of this section, that the application is deficient or that the application is denied. All reasons for deficiency or denial shall be stated in writing to the applicant.” Wyo. Stat. Ann. § 35-11-406(h). The Act defines a

deficiency as “an omission or lack of sufficient information serious enough to preclude correction or compliance by stipulation in the approved permit to be issued by the director.” *Id.* at 103(e)(xxiv).

4. Once an applicant publishes the permit application, an interested person can file an objection and receive either an informal conference with the DEQ director or a public hearing if the director elects not to have an informal conference. Wyo. Stat. Ann. § 35-11-406(k).

5. In a public hearing, the Council acts as the hearing examiner and decides “all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions.” Wyo. Stat. Ann. § 35-11-112(a). The Council has the specific authority to conduct hearings: 1) to promulgate rules and regulations required to administer the Act; 2) adopt, amend, or repeal rules or regulations as recommended by advisory boards; 3) contesting “the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the department or any division thereof;” or 4) contesting the “grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act.” Wyo. Stat. Ann. § 35-11-112(a)(i)-(iv).

6. The Council concludes it must exercise the authority listed under (a)(iii) because the case will decide DEQ’s administration and enforcement of the permitting procedures for a new coal mine, not rulemaking or an already granted or denied permit.

7. The Council finds that exercising this authority requires the Council to decide if DEQ correctly administered and enforced the requirements that a permit application is complete and non-deficient.

8. The Council notes that before a permit can issue, the Act requires that the administrator make specific findings under Wyo. Stat. Ann. § 35-11-406(n). These findings include the cumulative hydrologic impact assessment DEQ must perform. (Tr. Vol. II, 413-16).

9. Despite requests from the objectors, the Council concludes that it does not have the authority to make the findings under Section 406(n) for three reasons. First, section 406(n) explicitly states “the administrator” makes the findings in that section of the Act. Wyo. Stat. Ann. § 35-11-406(n). The Act defines “administrator” as “the administrator of each division of the department.” Wyo. Stat. Ann. § 35-11-103(a)(v). That definition does not include this Council. Second, the findings under 406(n) require DEQ, as the regulating agency, to issue a cumulative hydrologic impact assessment. *Id.* at § 406(n)(iii); WY ADC ENV LQC Ch. 19 § 2 (stating the cumulative hydrologic impact assessment “shall be sufficient to make the determination of W.S. § 35-11-406(n)(iii).”) That assessment takes “an intensive look at surface and groundwater quality and quantity within an area,” possibly including other nearby mines. (Tr. Vol. II, 413-15). The assessment can use data from multiple permits or permit applications and outside data sources. (*Id.*, 415). The Council concludes it does not possess the resources or expertise to make those findings. Third, DEQ has not yet issued findings under 406(n), and the Act does not require DEQ to issue the section 406(n) findings before it deems an application suitable for publication. *See generally* Wyo. Stat. Ann. § 35-11-406. As a result, DEQ has not administered or enforced that part of the Act. Without DEQ either administering or enforcing section 406(n), the Act does not grant the Council authority to step into the shoes of the regulator. *See* Wyo. Stat. Ann. § 35-11-112(a)(i)-(iv).

10. As a result, the Council must issue findings of fact and a decision on the relevant issues as described above within 60 days of the final hearing. *Id.* at 406(p).

**B. The Amount of Votes Required**

11. Under the Act, all matters that the Council hears “shall be decided by a majority vote of those on the Council.” Wyo. Stat. Ann. § 35-11-111(d).

12. Members of the Council, however, may recuse themselves by providing written notice of recusal or entering a verbal notice into the record. Wyo. Admin. Code Practice & Procedure Ch. 2 § 7(b). If a councilmember recuses him or herself, then that councilmember “shall not participate in the contested case.” *Id.*

13. The Council finds that a recusal from a case means the recused council member no longer serves on the Council for the purposes of that contested case.

14. Here, two members of the council, Richard Fairservis and Megan Degenfelder, have recused themselves. For purposes of this contested case neither Mr. Fairservis nor Ms. Degenfelder serve on the Council.

15. Therefore, the Council finds that Brook must obtain a majority of the five councilmembers serving on this case. *See* Wyo. Stat. Ann. § 35-11-111(d).

**C. The Applicable Statutes and Regulations**

16. Under the Act, Brook bears the burden of proving that its application is complete and non-deficient. To meet this standard, Brook must prove its application complies with the applicable statutes and regulations.

17. The applicable statutes are Wyo. Stat. Ann. § 35-11-406(a)-(b), (e)-(h).

18. Section 406(a) requires the permit applicant to provide information about the operator, surface owners, maps of the proposed permit area, and basic information about the proposed mining operation. Section 406(b) requires the applicant provide a Mine Plan and Reclamation Plan that explains in detail how the operator will disturb and restore the area within

the proposed permit area. The section also requires the applicant provide surface owner consent or an order in lieu of surface owner consent to the Mine Plan and Reclamation Plan.

19. Sections 406(e)-(h) require Brook's permit application be complete and non-deficient as described above.

20. The Land Quality Division (LQD) has also promulgated coal regulations that implement the Act. Brook must comply with those regulations as described below.

21. Chapter 2 of LQD's coal regulations requires Brook provide detailed information that complies with all applicable statutes and regulations. WY Admin Code ENV LQC Ch. 2, § 1. Brook must provide information on surface ownership, mineral ownership, previous mining history, and taxpayer information. *Id.* at § 2. Brook's application must also contain information on vegetation baseline information and methodology, wildlife studies, land use history, groundwater sampling data, geology and lithology data, soil assessments, water quality and quantity data, climatology, cultural resource assessments. *Id.* at §§ 3-4. Sections 5 and 6 expand the details Brook must include in its Mine and Reclamation Plans. *Id.* at §§ 5-6.

22. Chapter 3, § 2 requires Brook provide sufficient information relating to the presence or absence of alluvial valley floors within the permit area and on adjacent areas where an alluvial valley floor containing areas of sub-irrigation or flood irrigation agricultural activities may be affected. *Id.* at Ch. 3, § 2(b). Brook must include maps, geologic data, soils and vegetation data, geohydrologic descriptions, and information to identify geologic, hydrologic and biologic characteristics. *Id.* at § 2(c) Brook must also provide a monitoring plan to meet requirements of Chapter 5, § 3(b). *Id.*

23. Chapter 4, § 2 requires Brook to reclaim the land to a condition equal to or greater than its prior condition. *Id.* at Ch. 4, § 2(a). Brook must submit a proposed schedule for

backfilling and grading with supporting analysis and return all affected lands to their approximate original contour. *Id.* at § 2(b)-(c).

24. Chapter 5, §§ 3, 6 require Brook's operations to preserve and reestablish the geologic, hydrologic, and biologic characteristics to support essential hydrologic functions. *Id.* at Ch. 5, § 3(a), (c). Brook must install an environmental monitoring system to provide sufficient information showing essential hydrologic functions of the alluvial valley floor are being preserved and established on and outside affected lands. *Id.* at § 3(b). Brook must minimize disturbance of the prevailing hydrologic balance, unwarranted subsidence, submit a subsidence control plan, and prepare a written demonstration showing the fill has a minimum static safety factor of 1.3. *Id.* at § 6(d)-(e).

25. Chapter 6 requires Brook to comply with all applicable federal, state, and local laws when using explosives to mine. *Id.* at Ch. 6, § 1. Brook must publish a blasting schedule in a newspaper of general circulation and by mail to each residence or owner within one-half mile of blasting sites at least 30 days before blasting. *Id.* at § 3. The schedule shall be republished and redistributed every 12 months. *Id.* If the schedule changes, Brook must revise and republish the schedule at least 30 days but not more than 60 days before blasting. *Id.* Residents and owners within one-half mile shall be notified of the manner for requesting a pre-blast survey. *Id.*

26. Chapter 7, §§ 1, 2 requires Brook's application contain information relating to soils, vegetation, fish, wildlife, topography, geology, mineral deposits limited to the affected areas, subsidence control plan, and Reclamation Plan. Section 2 requires Brook adhere to the backfilling, grading and contouring requirements in Chapter 4, § 2(b). *Id.* at §§ 1, 2.

27. Chapter 12, § 1 requires the Administrator to make a determination in writing as to the existence and extent of an alluvial valley floor within the permit area or on adjacent areas

where the mining operation may affect surface water or groundwater that supply an alluvial valley floor. *Id.* at §1(a).

28. Chapter 19, § 2 requires Brook to provide information sufficient to enable the Administrator to determine the probable cumulative hydrologic impacts on surface and groundwater systems. *Id.* at § 2(a).

**D. The Council's Decision on Brook's Application**

29. Applying the findings of fact to this law, the Council concludes Brook's permit application is complete as defined in the Act. *See* Wyo. Stat. Ann. §§ 35-11-103(e)(xxii), 406(e)-(f). The application includes all of the sections, information, data, and maps the Act and applicable regulations require. The Council is also convinced by DEQ's comprehensive testimony that Brook's permit application is complete. (Tr. Vol. 1, 52, 112, Tr. Vol. II, 257, 318, 344-45, Tr. Vol. VII, 1509).

30. The Council concludes Brook's application is also not deficient because it meets the requirements of all applicable statutes and regulations. *See* Wyo. Stat. Ann. §§ 35-11-103(e)(xxiv), 406(h). Brook did all of the required studies and time to develop a non-deficient application. Likewise, the Council accepts DEQ's testimony that its technical review of Brook's application met the applicable statutes and regulations. (Tr. Vol. I, 43-46, Tr. Vol. II, 188, 316-17, Tr. Vol. III, 521).

31. Specifically, the Council finds the adjudication file in Volumes I, IA, and II contain the information required by applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(a)-(b); WY Admin Code ENV LQC Ch. 2, §§ 1-2.

32. Appendix D1, Land Use, in Volume III meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(a); WY Admin Code ENV LQC Ch. 2, §§ 2-3.



33. Appendix D2, History, in Volume III meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(a); WY Admin Code ENV LQC Ch. 2, §§ 1-2.

34. Appendix D3, Archeological and Paleontological Resource, in Volume III meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(a); WY Admin Code ENV LQC Ch. 2, §§ 3-4.

35. Appendix D4, Climatology, in Volume III meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(a); WY Admin Code ENV LQC Ch. 2, § 4.

36. Appendix D5, Topography, Geology and Overburden Assessment, in Volume IV meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(a); WY Admin Code ENV LQC Ch. 2, § 4.

37. As for the objections related to this section of Brook's permit application, the Council adopts DEQ's findings. The Council notes DEQ found no geologic hazards exist at the proposed Brook mine (Tr. Vol. I, 89-90). But if they do, DEQ has a methodology for addressing geologic hazards. (*Id.*, 90-91).

38. Appendix D6, Hydrology, in Volume V meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(a)-(b); WY Admin Code ENV LQC Ch. 2, § 4.

39. As for the objections related to this section of Brook's permit application, the Council is persuaded by the testimony of Dr. Muthu Kuchanur. Dr. Kuchanur has a PhD in environmental engineering and teaches national level training courses on groundwater modeling, coal mine permitting hydrology, quantitative hydrogeology, and applied engineering principles for the Office of Surface Mining. (Tr. Vol. III, 459-60). Dr. Kuchanur reviewed Brook's modeling process, the methodology used for the model, the input data used in the model, and the accuracy of the model. (*Id.*, 462-64). Dr. Kuchanur's review concluded that Brook's model

matched available data and multiple lines of evidence supported the accuracy of the model. (*Id.*, 480-83). Dr. Kuchanur also compared the predicted effect of Brook's mining on groundwater and found that it is small compared to existing groundwater sources. (*Id.*, 489-90). He noted that the groundwater model accounted for dewatering coal seams and the effect that could have on surrounding areas. (*Id.*, 561-62).

40. As a result, the Council concludes that Brook's groundwater model and the other hydrology aspects of the permit complied with the relevant statutes and regulations. (*Id.*, 496). Brook's permit application explains the probable hydrologic consequences of proposed mining. (Tr. Vol. VII, 1475). The baseline hydrology in Appendix D6, the probable hydrologic consequences discussion in the Mine Plan, and the Reclamation Plan explain the hydrologic consequences of Brook's proposed mining. (*Id.*, 1486). Brook's proposed mining would have little impact on groundwater inside the proposed permit boundary. (Tr. Vol. VII, 1482-83). Brook's isopach maps show a limited drawdown in groundwater, and the data in the permit application shows limited or no connection between the coal seams that Brook intends to mine and other water sources. (Tr. Vol. III, 555, 564). Brook's groundwater model also shows it is unlikely for Brook's operations to have a large impact on domestic wells. (*Id.*, 566).

41. In the TR-1 area specifically, the Council concludes that breaching the coal seam in that area will have limited impact on the Tongue River or other sources of groundwater. (*Id.*, 576). The Council notes Brook attempted to sample groundwater in the area around trench TR-1 but BHC had the sheriff's department escort Brook's contractor out of the area. (*Id.* 700-01). Still, Brook's groundwater model, geologic cross-sections, regional aquifer information, and other publically available data explain the groundwater in the saturated backfill of the TR-1 area. (Tr. Vol. VII, 1512).

42. The Council also agrees with Dr. Kuchanur's testimony about BHC's groundwater restoration demonstration (GRD). (Tr. Vol. VII, 1464- 1483, 1508-09). The GRD had a different objective than Brook's groundwater model and the permitting process in general. (Tr. Vol. VII, 1464-65). The GRD used past data to show recharge and does not predict the consequences of mining. (*Id.*, 1465-66). The GRD also used old data with unexplained variability, several orders of magnitude in some places. (*Id.*, 1477-78, BHC Ex. 15-040). Even so, the flow and recharge rates in the GRD matched predictions in Brook's groundwater model. (Tr. Vol. VII, 1466-71). The GRD also showed minimal interaction between the Tongue River and the saturated backfill, providing further evidence of the accuracy of Brook's groundwater model. (*Id.*, 1471-73, 1481-82).

43. Appendix D7, Soil Resources Assessment, in Volume VI meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(b); WY Admin Code ENV LQC Ch. 2, §§ 3-4.

44. Appendix D8, Vegetation Inventory, in Volume VII meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(b); WY Admin Code ENV LQC Ch. 2, § 3.

45. Appendix D9, Wildlife, in Volume VIII meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(a); WY Admin Code ENV LQC Ch. 2, § 4, Ch. 4, § 2.

46. Appendix D10, Wetlands, in Volume IX meets the requirements of applicable law. *See* WY Admin Code ENV LQC Ch. 2, § 4, Ch. 4, § 2.

47. Appendix D11, Alluvial Valley Floors, in Volume X meets the requirements of applicable. *See* WY Admin Code ENV LQC Ch. 2, § 4, Ch. 3, § 2, Ch. 12, § 1. The Council concludes that Brook will not affect any alluvial valley floors, including those found in 2016. (Tr. Vol. II, 11-13).

48. The Mine Plan in Volume XI meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(b); WY Admin Code ENV LQC Ch. 2, § 5, Ch. 3, § 2, Ch. 4, § 2, Ch. 6, §§ 1-6, Ch. 12, § 1.

49. As to objections about blasting, the Council agrees with Mr. Doug Emme that Brook's blasting will have little effect on nearby structures. (Tr. Vol. III, 584, 608). Still, the Council notes landowners within a half mile of the mine can request a pre-blast survey and Brook will publish a blasting schedule. (*Id.*, 582, 584-85).

50. As to objections about Brook's subsidence control plan and subsidence generally, the Council concludes Brook has met the relatively minimal requirements for a subsidence control plan. (Tr. Vol. II, 247-48). The Council also concludes that Brook's commitment to compile the required MSHA ground control plan will address subsidence. (*Id.*, 326-28). The Council concludes the calculations necessary for the ground control plan provide the same data DEQ required for every mining panel. (Tr. Vol. III, 663). It will also provide data Dr. Marino tested was needed. (Tr. Vol. II, 325). The ground control plan will also engineer each mining trench for both long and term-subsidence prevention. (Tr. Vol. II, 355-56). The mining process will also protect against subsidence by having pillars that run the length of each mine panel. (Tr. Vol. I, 120; Tr. Vol. II, 369).

51. The Reclamation Plan in Volume XII meets the requirements of applicable law. *See* Wyo. Stat. Ann. §§ 35-11-406(b); WY Admin Code ENV LQC Ch. 2, § 6, Ch. 3, § 2, Ch. 4, § 2.

52. As to objections about the adequacy of Brook's proposed bond, the Council accepts Mr. Emme's testimony that Brook's proposed amount is "robust" and "higher" than DEQ would have required. (Tr. Vol. III, 590). The Council also notes that DEQ has not yet set a

bond but will do so before issuing a permit. (*Id.*, 586-87). Once DEQ sets the reclamation bond, it will remain in place until DEQ finds Brook has successfully reclaimed disturbed land. (Tr. Vol. II, 180).

53. The Council notes DEQ's authority to enforce Brook's commitments in the permit application. (Tr. Vol. I, 117, 175-76, 230, 334, 349, Tr. Vol. III, 491, 493, 495, 624-25, 627). The Council also notes that other administrative agencies like MSHA, Game & Fish, Department of Transportation, DEQ's water and air quality divisions, Solid and Hazardous Waste Department, and the State Engineer's Office will have oversight over parts of Brook's operations. (Tr. Vol I, 152-53, 160-61, 183-84, 330, 538).

54. The Council finds that it should not impose additional permit conditions for two reasons. First, the Act does not authorize the Council to impose permit conditions. Instead, the Act authorizes the administrator, the director, and DEQ generally to administer permits, including any conditions on them. *See* Wyo. Stat. Ann. § 35-11-109. Second, the Council finds that no additional permit conditions are necessary for Brook's permit application to be complete and non-deficient.

55. Therefore, the Council finds that DEQ correctly determined Brook's permit application was complete, non-deficient, and suitable for publication. The Council's decision on the application pursuant to Wyo. Stat. Ann. § 35-11-406(p) is that: 1) DEQ should make the findings under Section 406(n) of the Act; and 2) based on the findings, the DEQ Director take appropriate action on Brook's permit application based on those findings.

DATED: July 24, 2017.



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## CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2017, I served a true and correct copy of the foregoing by email to the following:

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