

other parties advised or permitted an opportunity to respond to the Findings and Conclusions offered by DEQ or Brook. The Objectors should not suffer prejudice by following the rules and procedure established by the EQC when others choose to willfully ignore the procedure and file responses anyway.

The result is both DEQ and Brook asserting rather silly propositions by taking the position (either directly or indirectly) that the EQC has no authority to modify the proposed permit through the use of conditions. Neither DEQ nor Brook took that position during the proceedings and both elicited testimony to the contrary. Brook elicited testimony from its engineer Jeff Barron that it “welcomed” conditions the EQC found appropriate, and DEQ asked every landowner to describe any conditions to the permit that the landowner requested the EQC to consider. Now, both claim the EQC has no authority to modify the permit.

Nothing could be further from the truth. Wyoming Statute §35-11-112 defines the power and authority of the EQC and specifically states that the council may “*Order that any permit, license, certification or variance be granted, denied, suspended, revoked or **modified***” Wyo. Stat. §35-11-112(c)(ii) (LexisNexis 2015) (emphasis added). Clearly, the EQC has the power and authority to modify the conditions of a pending permit, particularly when it finds that such modifications are in furtherance of the Act’s goal of protecting and reclaiming the land, air and water of Wyoming and protecting the health and safety of Wyoming residents.

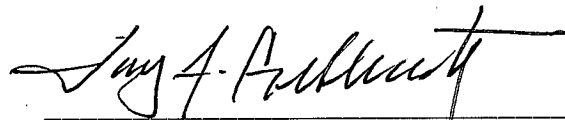
Amazingly, DEQ has gone so far as to advocate that the EQC should not consider more and better financial security for Wyoming and its land and water, claiming that a condition requiring Brook to have further financial assurance cannot be imposed as it “binds third parties”. Requiring that Brook (a company with no mining or reclamation history and evidently next to no assets) have further financial surety from its parent or partner company does not “bind third parties” to the permit

conditions, it simply requires that Brook obtain those assurances as a prerequisite to mining. No one is obligated to provide the assurance, but if Brook cannot obtain and present those assurances, it cannot mine. Brook has provided a plethora of non-binding verbal assurances, it and its partners or parent company should also provide Wyoming with the financial assurances to back up those claims. This assurance does not benefit the Objectors, just the state and citizens of Wyoming. It is astounding the DEQ does not seek this financial assurance itself.

WHEREFORE, for the foregoing reasons, the Fishers respectfully request that the “comments” of DEQ and “joinder” of Brook be struck and that the EQC consider neither pleading in its deliberations or decision in this matter.

DATED this 31th day of July, 2017.

YONKEE & TONER, LLP



Jay A. Gilbertz, WSB # 6-3087
Attorney for Objector Fishers
319 West Dow Street
P.O. Box 6288
Sheridan, WY 82801
Telephone: (307) 674-7451
Telefax: (307) 672-6250

CERTIFICATE OF SERVICE

I, Jay A. Gilbertz, hereby certify that on the 31th day of July, 2017, I served a true and correct copy of the above and foregoing by *electronic transmission*, duly addressed as follows:

Andrew Kuhlmann
James LaRock
Wyoming Attorney General's Office
andrew.kuhlmann@wyo.gov
James.larock@wyo.gov

Todd Parfitt
Director, DEQ
Todd.Parfitt@wyo.gov

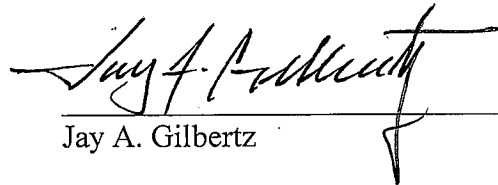
Alan Edwards
Deputy Director, DEQ
Alan.edwards@wyo.gov

Shannon Anderson
Powder River Basin Resource Council
sanderson@powderriverbasin.org

Thomas L. Sansonetti
Isaac Sutphin and Jeff Pope
Attorneys for Brook Mine, LLC
TLSansonetti@hollandhart.com
INSutphin@hollandhart.com
jspope@hollandhart.com
jmkelley@hollandhart.com
csvec@hollandhart.com

Jim Ruby
Executive Officer, EQC
jim.ruby@wyo.gov

Lynnette J. Boomgaarden
Clayton H. Gregersen
Attorneys for Big Horn Coal
lboomgaarden@crowleyfleck.com
cgregersen@crowleyfleck.com


Jay A. Gilbertz