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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In Re Brook Mine Permit Application)
) EQC Docket No. 17-4802
TFN 6 2-025)

**STIPULATION FOR AN AWARD OF COSTS AND EXPENSES BETWEEN THE
DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE POWDER RIVER
BASIN RESOURCE COUNCIL**

Petitioner Powder River Basin Resource Council ("Resource Council" or "PRBRC") and Respondent Department of Environmental Quality ("DEQ") (collectively "Parties") respectfully submit this Stipulation in the above-captioned proceeding, requesting the Environmental Quality Council ("EQC") approve the terms of this Stipulation, and retain jurisdiction solely to assure that the terms are implemented. Accordingly, the Parties stipulate and agree as follows:

RECITALS

WHEREAS, DEQ administers the Wyoming Environmental Quality Act, W.S. § 35-11-101, *et seq.*, ("Act") as an approved program under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201, *et seq.* (P.L. 95-87);

WHEREAS, Brook Mining Company, LLC ("Brook") sought approval for a new coal mine permit from DEQ under this approved state program;

WHEREAS, the Resource Council objected to the permit application and petitioned the EQC for a hearing to resolve the Resource Council's objections;

WHEREAS, the EQC initiated a contested case proceeding on the Resource Council's and other interested persons' objections ("the Proceedings") and, as part of the Proceedings, held a hearing on the objections on May 22-26 and June 7-8, 2017;

WHEREAS, on August 1, 2017, the EQC voted to remand Brook's permit application to DEQ;

WHEREAS, on September 27, 2017, the EQC issued its Findings of Fact, Conclusions of Law, and Order ("Order") identifying procedural and substantive deficiencies with Brook's permit application and ordered that the application should not be approved in its current form, its deficiencies should be remedied, and it should be resubmitted to DEQ for further review;

WHEREAS, on October 11, 2017, in response to the Order, DEQ Director Todd Parfitt determined that Brook's permit application could not be approved in its present form;

WHEREAS, on October 31, 2017, Brook filed a petition for judicial review of the EQC's Order with the First Judicial District Court ("the Appeal"); and

WHEREAS, the Parties have negotiated in good faith to reach an amicable settlement of any claims by the Resource Council to an award of costs and expenses, including attorneys' fees, incurred by the Resource Council as part of its participation to date in the Proceedings. .

PROVISIONS

NOW, THEREFORE, the Parties hereby stipulate to and request a conditional order from the EQC awarding the Resource Council twenty-nine thousand, five hundred, and two dollars and seventy cents (\$29,502.70) in costs and expenses ("Stipulated Award"), subject to the following stipulations by the Parties:

1. Based upon the EQC's Order and the Resource Council's participation in the Proceedings, the Resource Council qualifies under the elements found in Chapter 5, Section 2(a)(iv) of the DEQ Rules of Practice and Procedure to be awarded costs and expenses according to this Stipulation as follows:

a. The Resource Council objected to the issuance of a permit in the above-entitled matter and those objections included the hydrologic and subsidence issues testified to by the Resource Council's two expert witnesses, Mr. Mikel Wireman and Dr. Gennaro Marino;

b. The Resource Council initiated or participated in the contested case proceeding under the Act as it provides for the regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87;

c. The Resource Council substantially contributed to a full and fair determination of the issues; and

d. The Resource Council either prevailed in whole or in part, achieving at least some degree of success on the merits.

2. The Resource Council incurred costs and expenses in the amount of the Stipulated Award were for services provided by the Resource Council's two expert witnesses, Mr. Mikel Wireman and Dr. Gennaro Marino, who testified at the EQC's hearing in the Proceedings.

3. Subject to the terms of this Stipulation, the Stipulated Award is a reasonable and acceptable amount to satisfy any claims by the Resource Council to an award of costs and expenses, including attorneys' fees, that it incurred as part of its participation to date in the Proceedings. In consideration for an award of costs and expenses under this Stipulation, the Resource Council considers all such claims to be satisfied and waives any right to assert such claims in the future. Payment of the Stipulated Award shall be as follows:

a. DEQ shall not be required to tender any payment for the Stipulated Award until after the appeal has been fully decided by the district court and the time for filing a further appeal to the Wyoming Supreme Court has expired without the filing of an appeal, or when any further appeal has been fully decided. The Resolution Date referenced below shall be the latter of the date of the deadline for filing a further appeal to the Wyoming Supreme Court, or the date that DEQ receives a final decision of the Wyoming Supreme Court fully deciding that further appeal.

b. In the event that the EQC's Order is affirmed or upheld in whole by the final court reviewing the matter, the DEQ shall tender payment within 30 calendar days of the Resolution Date.

c. In the event that the EQC's Order is affirmed in part and/or reversed in part by the final court reviewing the matter, the parties shall confer on whether that court's final decision substantially shifts the identities of the prevailing and non-prevailing parties, and if so, whether the amount of the Stipulated Award should be altered. The parties shall confer on that matter within 15 calendar days after the Resolution Date. If the parties agree that the amount of the Stipulated Award does not need to be altered, the DEQ shall tender payment within 30 calendar days after the parties reach that agreement. If the parties agree to a new amount of a Stipulated Award, the parties shall file a new stipulation with the EQC and DEQ shall tender payment of the new amount within a reasonable amount of time after the EQC approves the stipulation. If the parties disagree, DEQ shall not be required to make any payment on the Stipulated Award here, but the Resource Council may file with the EQC a petition for the award of costs and expenses in accordance with Chapter 5, Section 1(b) of the Department's Rules of Practice and Procedure. If the Resource Council files such a petition, DEQ shall have 30 days from service within which to file an answer to the petition.

d. In the event the EQC's Order is fully reversed, the Stipulated Award and this Stipulation shall be vacated by subsequent order of the EQC and DEQ shall not be required to make any payment of the Stipulated Award.

4. The Resource Council agrees to forbear filing any petition for judicial review of an EQC decision regarding its petition for an award of costs and expenses, provided the EQC issues an Order in the amount of the Stipulated Award.

5. The amount of the Stipulated Award is limited to the unique facts of the Proceedings and the Stipulated Award amount does not establish any precedent under the Act.

6. The EQC shall retain jurisdiction over this matter to assure compliance with the provisions of this Stipulation and the EQC's order approving this Stipulation.

7. The Parties agree that if the EQC issues an order that does not incorporate or reference this Stipulation in its entirety, or includes language in any order that alters the terms of this Stipulation, either Party may void this Stipulation.

8. All Parties agree to use all reasonable efforts, commencing promptly on the effective date, to take, or cause to be taken in good faith, all actions, and to do, or cause to be done, all things necessary and proper to consummate and make effective the actions contemplated by this Stipulation.

9. This Stipulation constitutes the entire agreement and understanding among the Parties with respect to its subject matter and supersedes all prior contemporaneous negotiations, representations, or agreements, whether written or oral. None of the parties' respective duties and obligations under this Stipulation, nor any portion hereof, may be waived, modified, or amended except by a writing executed by the Parties.

10. The validity, construction, and interpretation of this Stipulation shall be governed by, and construed in accordance with, the substantive laws of the State of Wyoming. In no event shall any Party to this Stipulation be entitled to receive any indirect, special, or consequential damages for any breach of this Stipulation. In an action to enforce the terms of this Stipulation, a court is authorized to require specific performance of the terms of this Stipulation.

11. The State of Wyoming and DEQ do not waive sovereign immunity by entering into this Stipulation and retain all immunity and all defenses available to them as sovereigns under all state and federal law.

12. To the extent any Party to this Stipulation is an organization or entity, that Party represents and warrants that the terms of this Stipulation have been approved by the Party's respective governing body, if such approval is necessary, and that the individual executing this Stipulation on behalf of the Party is duly authorized to enter into this Stipulation.

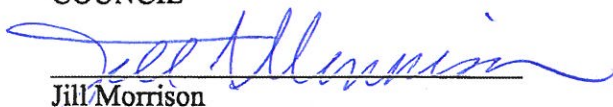
13. This Stipulation shall become effective upon the issuance of an order by the EQC approving the Stipulation.

14. This Stipulation may be executed in one or more counterparts. Facsimile or electronic signatures shall be considered as original signatures.

15. The Recitals are hereby fully incorporated into this Stipulation.

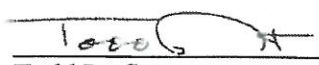
DATED this 10th day of November, 2017.

POWDER RIVER BASIN RESOURCE
COUNCIL



Jill Morrison
Executive Director
Powder River Basin Resource Council
934 N. Main St.
Sheridan, WY 82801

WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY



Todd Parfitt
Director
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200 W. 17th Street, 4th Floor
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10th day of November, 2017, the foregoing STIPULATION FOR AN AWARD OF COSTS AND EXPENSES BETWEEN THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE POWDER RIVER BASIN RESOURCE COUNCIL on the following parties by electronic mail, and through the EQC's electronic filing system, which will send a notice of electronic filing to all counsel and parties of record.

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