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ATTORNEYS FOR PETITIONER BROOK MINING COMPANY, LLC

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

IN THE MATTER OF THE WYOMING)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY'S DECISION ON BROOK MINING) Docket No. 17-4601
COMPANY, LLC'S PERMIT APPLICATION)
(TFN 6 2/025))

BROOK MINING COMPANY, LLC'S MOTION TO STAY PETITION FOR HEARING

Petitioner Brook Mining Company, LLC (Brook), respectfully requests the Environmental Quality Council (Council) stay its consideration of the issues pled by Brook in its Petition for Hearing filed November 9, 2017. As grounds for this Motion, Brook states as follows:

1. This Council issued its Findings of Fact, Conclusions of Law and Order on September 27, 2017, declaring Brook's application deficient.
2. On October 11, 2017, Todd Parfitt, Director of the Department of Environmental Quality (DEQ) denied Brook's permit application without prejudice to Brook's ability to supplement the application.

3. On October 27, 2017, Brook filed a Petition for Judicial Review of the Council's Findings of Fact, Conclusions of Law and Order, as well as the Council's denial of Brook's permit application. (In the Matter of the Environmental Quality Council's Findings of Fact, Conclusions of Law and Order (EQC Docket No. 17-4802, In Re Brook Mine Application) and the Wyoming Department of Environmental Quality's Decision on Brook Mining Company, LLC's Permit Application (TFN 6 2/025), Civil Action No. 188-771).

4. On November 9, 2017, Brook filed with the Council a Petition for Hearing to Contest DEQ's decision denying Brook's permit application.

5. While the Council's September 27, 2017 Findings of Fact, Conclusions of Law, and Order expressed the Council's view on the contested legal issues identified in Brook's Petition for Hearing, Wyo. Stat. Ann. § 35-11-802 could be interpreted to require that the Director's decision—relying on the Council's Order—be appealed back to the Council. Under the Council's regulations, Brook must request a hearing as part of an appeal even though the Council has already held a hearing and addressed Brook's permit application in its September 27, 2017 Order. *See* ENV PP Ch. 2, § 4.

6. As a result, Brook's Petition for Hearing seeks to conservatively preserve all possible rights to have the decision at issue reviewed on the merits.

7. But Brook's Petition for Judicial Review will resolve the legal issues in the November 9, 2017 Petition for Hearing without requiring the Council to review arguments and issues addressed in its previous Order.

8. Counsel for Brook has conferred with DEQ's counsel, and DEQ does not oppose staying Brook's Petition for Hearing.

9. In the interests of judicial economy, Brook respectfully moves the Council for an Order staying Brook's November 9, 2017 Petition for Hearing. A proposed form of Order is provided.

DATED: November 14, 2017.



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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, I served the foregoing by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed to the following:

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