

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

IN RE BROOK MINE APPLICATION)
) **DOCKET 17-4802**
)
TFN 6 2-025)
)

**ORDER AWARDING ATTORNEY'S FEES TO
OBJECTORS MARY BREZIK-FISHER AND DAVID FISHER**

This matter came before the Environmental Quality Council (EQC) upon a Stipulation filed on November 9, 2017, between the Department of Environmental Quality (DEQ) and Objectors Mary Brezik-Fisher and David Fisher ("Fishers"), regarding an award of attorney's fees to the Fishers. These parties have agreed in writing to resolve the issue of attorney's fees by a stipulation rather than through further contested case proceedings and the related expense and uncertainty involved in such proceedings.

Based upon the Stipulation of these parties, and in accordance with Wyo. Stat. Ann. § 35-11-437(f) and the Department of Environmental Quality Rules of Practice and Procedure, Chapter 5, Section 2, the EQC finds an award of attorney's fees to the Fishers is appropriate under the terms and conditions agreed to by these parties. The EQC further finds as follows:

1. The Objectors Mary Brezik-Fisher and David Fisher were Objectors to the issuance of a permit in the above-entitled matter and those objections included contesting the adequacy of the hydrologic assessments and conclusions and the adequacy of the subsidence assessments and conclusions of the permit application;
2. The Fishers initiated or participated in the contested case proceeding under the Wyoming Environmental Quality Act as it provides for the regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87;

3. The Fishers substantially contributed to a full and fair determination of the issues; and
4. The Fishers either prevailed in whole or in part, achieving at least some degree of success on the merits.
5. The Fishers have supplied DEQ with a detailed and itemized attorney's fee invoice detailing the hours worked by their attorney, the hourly rate charged by their attorney, and an itemized detail of the expenses incurred. So far as the invoice demonstrates that the Fishers incurred attorney's fees up to the amount stipulated to be awarded below, DEQ does not dispute that the hours expended were reasonable and at the customary commercial rate of payment for such services in the area. DEQ also does not dispute that the rate charged was reasonable given the known experience, reputation and ability of the Fishers' attorney and DEQ has waived any further showing as may be required by DEQ's Rules and Regulations, by law, or by custom in relation to a request for an award of attorney's fees.
6. These parties have stipulated to an award of attorney's fees in the amount of **Thirty-Five Thousand Dollars (\$35,000.00) to the Fishers.**

The parties, through their *Stipulation* recognize that Brook Mining Company, LLC, has filed a petition for judicial review of the EQC's September 28, 2017 Order in these proceedings (EQC's Order). To account for the outcomes of this appeal, the parties have agreed that payment of this Award of Attorney's Fees shall be subject to the following conditions:

1. DEQ shall not be required to tender any payment for the Award of Fees 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.
2. In the event that the Order of the EQC 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.
3. 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 Award of Fees 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 Award of Fees 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 an Award of Fees, the parties shall file a new stipulation with the Council and DEQ shall tender payment of the new amount within a reasonable amount of time after the Council approves the stipulation. If the parties disagree, DEQ shall not be required to make any payment on the Award of Fees stipulated here, but the Fishers may file with the Council a petition for the award of attorney's fees in accordance with Chapter 5, Section 1(b) of the Department's Rules of Practice and Procedure. If the Fishers file such a petition, DEQ shall have 30 days from service within which to file an answer to the petition.

4. In the event the EQC's Order is fully reversed, the Award of Fees shall be vacated by subsequent order of the EQC and DEQ shall not be required to make any payment on the Award of Fees.
5. Any payment for an Award of Fees shall be made payable to the "Yonkee & Toner, LLP Trust Account" and delivered to 319 West Dow Street, Sheridan, Wyoming 82801.
6. Nothing in this *Stipulation* prohibits the Fishers from seeking an additional award of attorney's fees, costs or expenses, as may be allowed by law, that result from the appeal of the EQC's Order.
7. The State of Wyoming and DEQ have not waived sovereign immunity by entering into the *Stipulation* and retain all immunity and all defenses available to them as sovereigns under all state and federal law.

The EQC hereby finds that there is no reason why the *Stipulation* of these parties should not be accepted by the EQC and reduced to an Order of this Council. Nothing in this Order shall alter the provisions of the *Stipulation* between these parties.

IT IS THEREFORE ORDERED, by the EQC that the Fishers are hereby awarded attorney's fees against the DEQ in the amount of \$35,000.00 with conditions on the payment of

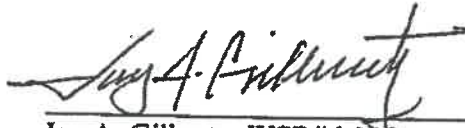
that award as set forth above. The EQC shall retain jurisdiction to enforce the terms and conditions of this *Order* and the *Stipulation*.

DATED this 15 day of November, 2017.




CHAIRMAN OF THE ENVIRONMENTAL QUALITY COUNCIL
Hearing Officer

Approved as to Form:



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CERTIFICATE OF SERVICE

I, Jim Ruby, certify that at Cheyenne, Wyoming, on the 15th day of November, 2017, I served a copy of the foregoing **ORDERS FOR AWARD OF COSTS TO FISHERS AND PRBRC** by electronic mail addressed to the following:


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