

On November 29, 2017, Respondents filed their *Response In Opposition To Petition to the Environmental Quality Council For Order In Lieu of Landowner Consent*. Among the arguments raised in opposition to BHB's Petition, Respondents have asserted:

EQC cannot issue an order in lieu of the surface owner's consent unless BHB's proposed use will not substantially prohibit the surface owner's operations. WYO. STAT. § 35-11-406(b)(xii)(C). TTT Ranch Company's ranching operations in the Herco Amendment area will be substantially prohibited by BHB's proposed mining activities. Moreover, because BHB fails to state a date when its mining and reclamation activities will be completed, the time period during which TTT Ranch Company's operations will be substantially prohibited is unclear.

In order to show that TTT Ranch Company's ranching operations in the Herco Amendment area will be substantially prohibited by BHB's proposed mining activities, Respondents will call Clayton McGuire to testify. Mr. McGuire has been employed as the Ranch Manager of the TTT Ranch for more than ten (10) years and is the individual who is responsible for operations conducted on the ranch. Mr. McGuire has personal knowledge regarding the topography and drainages within the Herco Amendment area. In addition, Mr. McGuire has personal knowledge regarding the roads which can be used to access the Herco Amendment area. Mr. McGuire is the person most knowledgeable about the livestock operations of the TTT Ranch that would be impacted by BHB's proposed mine plan and reclamation plan. Moreover, Mr. McGuire is the person most knowledgeable about hunting operations conducted on the TTT Ranch and how they would be impacted by BHB's proposed mine plan and reclamation plan. In order to effectively convey such information to the members of the Environmental Quality Council, Respondents intend to have Mr. McGuire testify in person and use various maps and exhibits to explain his testimony.

Today, the undersigned learned that Mr. McGuire was recently hospitalized for a severe infection. Attached hereto as **Exhibit "A"** is a letter from Mr. McGuire's treating physician Timothy E. Olson, MD, which states as follows:

February 5, 2018

Mr. Clayton McGuire was under my care at Wyoming Medical Center from January 30 through February 5, 2018. He has a severe infection requiring several weeks of intravenous antibiotics. I understand he lives in a very rural area of Wyoming and it would be a considerable and taxing effort for him to leave his home for any reason other than [sic] medical care.

Yours Very Truly,

/s/ Timothy E. Olson, M.D.
Hospital Medicine Physician
Wyoming Medical Center

II. LEGAL STANDARD

Ch. 2 Section 14(a) of the DEQ Practice and Procedure for Contested Case Hearings provides as follows: "(a) A motion for a continuance of any scheduled hearing shall be in writing, stating the reasons for the motion, and be filed and served on all parties and the hearing officer. A motion for continuance shall be granted only upon a showing of good cause."

III. ARGUMENT

Due to Mr. McGuire's unexpected health condition, he cannot adequately prepare for nor can he travel from his home outside of Kaycee, Wyoming to Cheyenne, Wyoming to testify at the scheduled hearing on February 22, 2018. See, **Exhibit "A."** The facts and circumstances in the present case justify a continuance of the February 22, 2018 hearing. See, *Tomash v. Evans*, 704 P.2d 1296, 1299 (Wyo. 1985).

The undersigned has contacted counsel for BHB regarding Mr. McGuire's health condition and discussed whether BHB objects to a continuance of the contested case hearing. Counsel for BHB advised the undersigned that BHB objects to a continuance of the February 22, 2018 hearing.

Substantial factual reasons exist which establish good cause to continue the February 22, 2018 contested case hearing.

THEREFORE, Respondents respectfully request that the Hearing Examiner continue this matter for several weeks until such time that Mr. McGuire's physician makes a medical determination that Mr. McGuire can travel to Cheyenne, Wyoming to testify in person before the Environmental Quality Council.

DATED this 9th day of February, 2018.

TTT RANCH COMPANY and
JAMES H. CROSSINGHAM, JR.,
Respondents

/s/ Scott P. Klosterman
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Attorney for Respondents

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing **RESPONDENTS' MOTION FOR CONTINUANCE OF HEARING** was served upon counsel in the manner set forth below this 9th day of February, 2018.

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- U.S. Mail (Postage Prepaid)
- Fax
- Overnight Delivery
- Hand Delivery
- Email

/s/ Scott P. Klosterman _____
Scott P. Klosterman