

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN RE BLACK HILLS BENTONITE)
PERMIT TO MINE NO. 248c) DOCKET 17-1601

ORDER GRANTING RESPONDENTS' MOTION FOR CONTINUANCE OF HEARING

THIS MATTER having come before Hearing Examiner Meghan Lally on *Respondents' Motion for Continuance of Hearing* and the Hearing Examiner being fully advised, FINDS:

1. On September 20, 2017, Petitioner Black Hills Bentonite, LLC ("BHB") filed its *Petition to the Environmental Quality Council For Order In Lieu of Landowner Consent* ("Petition"). BHB's Petition relates to its application to include an additional 347 acres into Permit to Mine No. 248C ("Herco Amendment"). All of the 347 acres of surface lands within the Herco Amendment area are owned by TTT Ranch Company.

2. 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.

3. 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.

4. Mr. McGuire was recently hospitalized for a severe infection. Mr. McGuire's treating physician, Timothy E. Olson, MD, states in a letter dated February 5, 2018 as follows:

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.

5. 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."

6. 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

7. Hearing Examiner Meghan Lally finds that counsel for the parties have met and conferred and that BHB objects to a continuance of the February 22, 2018 hearing.

8. Hearing Examiner Meghan Lally finds that 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).

9. Hearing Examiner Meghan Lally finds that substantial factual reasons exist which establish good cause to continue the February 22, 2018 contested case hearing and therefore grants *Respondent's Motion to Continue Hearing*.

IT IS HEREBY ORDERED that the hearing scheduled for February 22, 2018 in the above-referenced matter is continued until _____, 2018, or in the alternative, if Mr. McGuire's physician makes a medical determination that Mr. McGuire can travel to Cheyenne, Wyoming to testify in person before, _____, 2018, then the hearing may be re-scheduled at an earlier date.

DATED this _____ day of February, 2018.

MEGHAN LALLY, HEARING EXAMINER
ENVIRONMENTAL QUALITY COUNCIL

CERTIFICATE OF SERVICE

I, James Ruby, certify that at Cheyenne, Wyoming, on the _____ day of February, 2018, I served a copy of the forgoing **Order Granting Respondents' Motion to Continue Hearing** by electronic mail to the following:

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