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Attorney for Respondents

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

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

RESPONDENTS' PREHEARING DISCLOSURE STATEMENT

COME NOW Respondents, TTT Ranch Company, a Wyoming corporation ("TTT Ranch Company"), and James H. Crossingham, Jr. ("Crossingham"), by and through their attorney Scott P. Klosterman of the law firm of WILLIAMS, PORTER, DAY & NEVILLE, P.C., and pursuant to the *Scheduling Order* dated December 6, 2017 and in accordance with Ch. 2, Section 18 of the DEQ Practice and Procedure for Contested Case Hearing, hereby submit their *Prehearing Disclosure Statement* as follows:

(a)(i) A complete list of all witnesses who will or may testify, together with information on how that witness may be contacted, and a brief description of the testimony the witness is expected to give in the case.

Respondents **will** call the following individuals to testify at the contested case hearing in this matter:

1. **Clayton McGuire**
c/o WILLIAMS, PORTER, DAY & NEVILLE, P.C.
159 North Wolcott, Suite 400
Casper, Wyoming 82602

Clayton McGuire has been employed for more than ten (10) years as the Ranch Manager of the TTT Ranch which is located in Johnson County, Wyoming. Mr. McGuire is responsible for all operations conducted on the TTT Ranch, and has personal knowledge regarding the topography, water sources and drainages, livestock management, and wildlife. Mr. McGuire will testify that the TTT Ranch is owned by TTT Ranch Company. Mr. McGuire will also testify about the surface lands owned by TTT Ranch Company as reflected in the Warranty Deed dated August 20, 1986 which include those within the Herco Amendment area. Mr. McGuire In addition, Mr. McGuire will testify about the operations of the TTT Ranch conducted on the surface lands including those within the Herco Amendment area. Mr. McGuire will further testify about the operations of the TTT Ranch that would be impacted by Petitioner Black Hills Bentonite's ("BHB") proposed mine plan and reclamation plan. In addition, Mr. McGuire will testify about his personal observations and knowledge of BHB's current and previous mining operations and reclamation efforts conducted on surface lands owned by TTT Ranch Company. Mr. McGuire will also testify consistent with Respondents' *Response In Opposition to Petition to the Environmental Quality Council For Order In Lieu of Landowner Consent*, and Respondents' discovery responses submitted in this matter.

2. **Tom Thorson**
c/o ASSOCIATED LEGAL GROUP, LLC.
1812 Pebrican Avenue
Cheyenne, Wyoming 82001

Tom Thorson is the President of BHB. Mr. Thorson is expected to testify regarding the State of Wyoming Department of Environmental Quality Land Quality Division Application for Permit to Mine or Amendment to a Permit to Mine or Coal Permit Renewal – Permit to Mine No. 248C – Herco Amendment, dated November 17, 2017. Mr. Thorson is also expected to testify regarding the Mine Plan for Permit to Mine No. 248C – Herco Amendment as well as the Reclamation Plan for Permit to Mine No. 248C – Herco Amendment. Mr. Thorson is further expected to testify about Permit to Mine No. 248C and operations conducted thereunder. Mr. Thorson is further expected to testify about communications with Jim Crossingham, Jr. regarding BHB's request for surface owner consent including his letters to Jim Crossingham, Jr. dated January 31, 2017 and May 12, 2017. Mr. Thorson is further expected to testify about surface and mineral ownership within the boundaries of the Herco Amendment, BHB's legal access to the Herco Amendment area, and Petitioner's discovery responses submitted in this matter.

3. **Bruce Lawson**
c/o ASSOCIATED LEGAL GROUP, LLC.
1812 Pebrican Avenue
Cheyenne, Wyoming 82001

Bruce Lawson is an employee of BHB. Mr. Lawson is expected to testify regarding his letter to Don Chapin dated April 22, 2008. Mr. Lawson is further expected to testify regarding the location and maintenance of mining claim Bobcat #10. Mr. Lawson is further expected to testify regarding the letter he received from TTT Ranch dated April 14, 2016.

Respondents **may** call the following individuals to testify at the contested case hearing in this matter:

4. **James H. Crossingham, Jr.**
c/o WILLIAMS, PORTER, DAY & NEVILLE, P.C.
159 North Wolcott, Suite 400
Casper, Wyoming 82602

James H. Crossingham, Jr. is the President of TTT Ranch Company. Mr. Crossingham may testify about the surface lands owned by TTT Ranch Company including those within the Herco Amendment area. Mr. Crossingham may also testify about communications and correspondence he has had with representatives of BHB concerning the Herco Amendment area and the request for surface owner consent. Mr. Crossingham may further testify including, but not limited to, the Mine Plan for Permit to Mine No. 248C – Herco Amendment; Reclamation Plan for Permit to Mine No. 248C – Herco Amendment; and Form 8 – Surface Owner Consent Form. Mr. Crossingham may further testify regarding the Placer Mining Claim Location Certificate and Affidavit of Assessment for mining claim TTT #13-27. In addition, Mr. Crossingham may testify regarding his personal observations and knowledge of BHB’s mining operations and reclamation efforts conducted on surface lands owned by TTT Ranch Company. Mr. Crossingham may also testify consistent with Respondents’ *Response In Opposition to Petition to the Environmental Quality Council For Order In Lieu of Landowner Consent*, and Respondents’ discovery responses submitted in this matter.

5. **James H. Crossingham, IV**
c/o WILLIAMS, PORTER, DAY & NEVILLE, P.C.
159 North Wolcott, Suite 400
P.O. Box 10700
Casper, Wyoming 82602

James H. Crossingham, IV is a minority shareholder of TTT Ranch Company. Mr. Crossingham may testify regarding the terms of the Assignment he made to BHB Limited Partnership on April 30, 2013 of mining claim nos. TTT #10 and TTT #11.

6. **Mike Curuchet**
19855 Willow Creek Road
Kaycee, Wyoming 82639

Mike Curuchet may testify regarding BHB’s mining operations on his family's ranch in the Willow Creek/Posey Creek area and the Martirina ranch, and the negative impacts to the land, water drainages, water quality, air quality, forage, and livestock operations. Mr. Curuchet may also testify about the impacts on livestock operations and air quality due to BHB's hauling bentonite on gravel and dirt roads including, without limitation, the TTT Road, Willow Creek Road, Murphy Creek Road, and private roads.

7. **George Renkert**
481 Barnum Road
P.O. Box 227
Kaycee, WY 82639

George Renkert may testify regarding BHB's mining operations on his ranch in the Barnum area (Alkali Creek, Cottonwood Creek, Toddy Draw, Peterson Draw, Will Taylor, Black Shack, Sage, Bethlehem, Murphy Creek), and the negative impacts to the land, water drainages, water quality, air quality, forage, livestock operations, and farming operations. Mr. Renkert may also testify about the impacts to ranching operations and air quality due to BHB hauling bentonite on gravel and dirt roads including, without limitation, those in the Alkali area, the Toddy Draw area, the Peterson Draw area, the Will Taylor area, the Black Shack area, the Sage / Bethlehem area, the Murphy Creek area, and private roads.

8. **Tom Harlan**
872 Barnum Road
Kaycee, WY 82639

Tom Harlan may testify regarding BHB's mining operations on his family's ranch in the Barnum area (Peterson Draw, Will Taylor, Black Shack, Sage, Bethlehem, Murphy Creek), and the negative impacts to the land, water drainages, water quality, air quality, forage, and livestock operations. Mr. Harlan may also testify about the impacts to livestock operations and air quality due to BHB hauling bentonite on gravel and dirt roads including, without limitation, the Peterson Draw area, the Will Taylor area, the Black Shack area, the Arminto Draw area, the Sage / Bethlehem area, the Murphy Creek area, and private roads.

9. **Representatives of the WDEQ**

Respondents may call one or more representatives/agents/employees of the WDEQ that have knowledge of: (1) State of Wyoming Department of Environmental Quality Land Quality Division Application for Permit to Mine or Amendment to a Permit to Mine or Coal Permit Renewal – Permit to Mine No. 248C – Herco Amendment, dated November 17, 2017; (2) Mine Plan for Permit to Mine No. 248C – Herco Amendment; and (3) Reclamation Plan for Permit to Mine No. 248C – Herco Amendment, to discuss various aspects of the application, mine plan and reclamation plan.

10. Respondents reserve the right to call: (1) any and all “will call” and/or “may call” witnesses listed by Petitioner; (2) any witness necessary for impeachment and/or rebuttal; and (3) any witness necessary to lay foundation for exhibits. Respondents further reserve the right to supplement this list of witnesses upon reasonable notice to Petitioner prior to the contested case hearing in this matter.

(a)(ii) A statement of the specific claims, defenses, and issues which the party asserts are before the hearing officer for hearing, based on the party's filing.

The EQC should not grant consent, in lieu of the surface owner's consent, pursuant to WYO. STAT. § 35-11-406(b)(xii), where, as here, the application, the mine plan and reclamation plan, for the Herco Amendment, is deficient and fatally flawed. To wit:

1. BHB does not have the legal right to mine on all lands within the Herco Amendment area as required by WYO. STAT. § 35-11-406(a)(ii);
2. BHB knowingly submitted a false sworn statement to the DEQ stating that it has the legal right to mine on all lands within the Herco Amendment area through the year 2022;
3. BHB does not have legal access to the Herco Amendment area;
4. BHB knowingly submitted a false sworn statement to the DEQ regarding the names and addresses of all mining claim owners of record within the Herco Amendment area as required by WYO. STAT. § 35-11-406(a)(iv);
5. BHB failed to show the location and extent of the proposed affected lands, including without limitation, access and haul roads, as required by WYO. STAT. § 35-11-406(b)(v);
6. BHB failed to submit a mining plan and reclamation plan detailed so as to illustrate the full proposed use of TTT Ranch surface lands including proposed routes of egress and ingress as required in WYO. STAT. § 35-11-406(b)(xii)(B); and
7. BHB's mine plan and reclamation plan fails to reclaim the surface to its approved future use as soon as feasibly possible as required by WYO. STAT. § 35-11-406(b)(xii)(D): BHB failed to propose a procedure to avoid constituting a public nuisance, endangering the public safety, human or animal life, property, wildlife and plant life in and adjacent to the permit area including a program for fencing all roadways to protect the surface owners' ongoing operations as required by WYO. STAT. § 35-11-406(b)(xiii) and a program to control dust and public access through the TTT Ranch.

In the event that the EQC issues an order in lieu of TTT Ranch Company's consent, then such consent should be conditioned upon the following:

1. BHB shall execute a bond or undertaking to the state for the use and benefit of TTT Ranch Company as required by WYO. STAT. § 35-11-416;
2. BHB shall use only the road commonly known as the Tisdale Mountain Road, upon which it has a legal right of access, for egress and ingress to the Herco Amendment area;
3. BHB shall implement and enforce a dust control program in all areas where it conducts operations relating to the Herco Amendment area, including roads;

4. BHB shall control public access on all roads used for egress and ingress to the Herco Amendment area;
5. The consent shall be limited to the lands within the Herco Amendment area upon which BHB has the legal right to mine;
6. The consent shall terminate on April 30, 2020 as to lands within Mining Claim TTT #10;
7. The consent shall terminate in 2022 as to all lands, other than those within Mining Claim TTT #10; and
8. The consent shall not apply to any extensions, amendments or modifications of the mining plan and reclamation plan submitted in the current application.

(a)(iii) A statement of the burden of proof to be assigned in the contested case with reference to specific regulatory, statutory, constitutional, or other authority established by relevant case law.

BHB, as the applicant for a mine permit, has the burden of proof to establish that its application, including but not limited to, the mine plan and reclamation plan, complies with all requirements of the Wyoming Environmental Quality Act and all applicable federal and state laws. *See*, WYO. STAT. § 35-11-406(m).

(a)(iv) A statement of stipulated facts. If the parties are unable to stipulate to facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons facts cannot be stipulated.

Respondents stipulate to the following facts:

1. TTT Ranch Company does not own any mineral rights in any lands within the boundaries of the Herco Amendment Area.
2. James H. Crossingham, Jr. does not own any mineral rights in any lands within the boundaries of the Herco Amendment Area.
3. All lands within the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, and the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 11, T. 41 N., R. 81 W. are fee, meaning that neither the surface nor mineral estate are in federal ownership.
4. The lands conveyed by the quitclaim deed from Herco Minerals to BHB are fee.
5. The surface estate of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11, T. 41 N., R. 81 W. is in private (fee) ownership.
6. The mineral estate of the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11, T. 41 N., R. 81 W. was reserved by the federal government.

7. Mining claim TTT #10, BLM Serial Number WMC303691 is located on the NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11. T. 41 N., R. 81 W.
8. Mining claim TTT #10, BLM Serial Number WMC303691, was located on January 24, 2011 and is designated by BLM as Active.
9. Mining claim TTT #10, BLM Serial Number WMC303691, is active and valid.
10. The surface estate of the SE $\frac{1}{4}$ of Section 11. T. 41 N., R. 81 W. is in private (fee) ownership.
11. The mineral estate of the SE $\frac{1}{4}$ of Section 11. T. 41 N., R. 81 W. was reserved by the federal government.
12. Mining claim Bobcat #10, BLM Serial Number WMC293763, is located on the SE $\frac{1}{4}$ of Section 11. T. 41 N., R. 81 W.
13. Mining claim Bobcat #10, BLM Serial Number WMC293763, was located on May 18, 2008, and is designated by BLM as Active.
14. Mining claim TTT 13-27, BLM Serial Number WMC309575, is located on the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11. T. 41 N., R. 81 W.
15. Mining claim TTT 13-27, BLM Serial Number WMC309575, was located on May 23, 2013, and is designated by BLM as Active.
16. On December 15, 2017, the BLM accepted a Notice of Intent to Locate (“NOITL”) mining claims filed by Pamela Watson on the E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11. T. 41 N., R. 81 W. The land covered by the NOITL was segregated from new mineral entry and mining claim location from December 16, 2017 to March 15, 2018.
17. Figure 1 attached to *Black Hills Bentonite Permit to Mine No. 248C (Herco Amendment) Report Prepared by Alan Rabinoff*, is correct.
18. Figure 2 and Attachments 1, 2, and 3 attached to *Black Hills Bentonite Permit to Mine No. 248C (Herco Amendment) Report Prepared by Alan Rabinoff*, are correct copies.
19. BHB has the legal right to mine bentonite on Mining claim TTT#10 until April 30, 2020, at which time all of BHB’s rights are terminated.
20. Hot Water Creek, Million Creek and Thomas Creek are significant drainages as defined by WDEQ/LQD, District II, as shown as a blue-line on U.S.G.S. topographic maps submitted by BHB.

21. BHB has not posted a surface owner protection bond for the use and benefit of TTT Ranch Company as required by WYO. STAT. § 35-11-416(a) for damages to the surface estate, to the crops or forage, or to the tangible improvements of the surface owner.
22. Wall Creek road located in Johnson County, Wyoming is a private road.
23. BHB has no access agreement to use the Wall Creek road.
24. BHB has legal access across lands *within* the Herco Amendment area.
25. BHB does not have legal access across surface lands owned by TTT Ranch Company to the boundaries of the Herco Amendment area.

(a)(v) A complete list of all documents, statements, etc., which the party will or may introduce into evidence.

Respondents anticipate that Petitioner will offer as exhibits the Herco Amendment application, mine plan and reclamation plan it submitted to DEQ in their entirety. Therefore, in order to avoid duplication, Respondents have not listed those documents as exhibits. If Petitioner does not list the Herco Amendment application, mine plan and reclamation plan it submitted to DEQ in their entirety as exhibits, then Respondents reserve their rights to supplement their exhibits.

Respondents **will** introduce the following documents into evidence at the contested case hearing:

- A. Warranty Deed – From Norwest Bank Nebraska, N.A. to TTT Ranch Company, dated August 20, 1986.
- B. Location Certificate of Bentonite Placer Mining Claim for mining claim no. TTT #10 - NW $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11, Township 41 North, Range 81 West, County of Johnson, State of Wyoming, dated January 24, 2011.
- C. Affidavit of Assessment including mining claim no. TTT #10 - NW $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 11, Township 41 North, Range 81 West, County of Johnson, State of Wyoming, dated August 16, 2017.
- D. Letter from Bruce A. Lawson to Don Chapin, dated April 22, 2008.
- E. Location Notice & Certificate of Bentonite Placer Mining Claim for mining claim no. Bobcat #10 - SE $\frac{1}{4}$ of Section 11, Township 41 North, Range 81 West, County of Johnson, State of Wyoming, dated May 20, 2008.
- F. Letter from TTT Ranch Company to BHB, dated March 23, 2016.
- G. Letter from TTT Ranch Company to Bruce Lawson, dated April 14, 2016.
- H. Letter from TTT Ranch Company to BHB, dated April 14, 2016.
- I. Placer Mining Claim Location Certificate for mining claim no. TTT #13-27 - E $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11, Township 41 North, Range 81 West, County of Johnson, State of Wyoming, dated May 23, 2013.

- J. Affidavit of Assessment including mining claim no. TTT #13-27 - E½SE¼ of Section 11, Township 41 North, Range 81 West, County of Johnson, State of Wyoming, dated August 15, 2017.
- K. Notice of Intent to Locate placer mining claim - W½SE¼ of Section 11, Township 41 North, Range 81 West, County of Johnson, State of Wyoming, established December 15, 2017.
- L. Letter from Tom Thorson, President of BHB, to Jim Crossingham, Jr., President of TTT Ranch Company, dated January 31, 2017.
- M. Letter from TTT Ranch Company to BHB, dated May 1, 2017.
- N. Letter from Tom Thorson, President of BHB, to Jim Crossingham, President of TTT Ranch Company, dated May 12, 2017.
- O. Royalty Agreement from Emerick Huber to BHB, dated January 16, 2017.
- P. Access Agreement from Kaycee Land and Livestock Partnership c/o Emerick Huber to BHB, dated February 14, 2017.
- Q. Declaration of Easement from Michael Tobin to BHB, dated January 17, 2017.
- R. Johnson County Land Use Plan showing all county roads.

In addition to the exhibits listed above, Respondents reserve the right to offer: (1) any exhibit listed by Petitioner (unless objected to); (2) any exhibit needed for impeachment or rebuttal; and (3) any exhibit necessary and appropriate for demonstrative purposes. Respondents further reserve the right to supplement their exhibits with any documents produced or identified in discovery, or as otherwise reasonably appropriate prior to the contested case hearing in this matter.

(a)(vi) An approximation of the time required for the hearing.

Respondents believe that an approximation of the time required for the contested case hearing in this matter is (1) one day.

DATED this 10th day of February, 2018.

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

/s/ Scott P. Klosterman
Scott P. Klosterman (Wyo. Bar #6-3081)
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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' PREHEARING DISCLOSURE STATEMENT** was served upon counsel in the manner set forth below this 10th day of February, 2018.

David G. Ditto
ASSOCIATED LEGAL GROUP, LLC
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- U.S. Mail (Postage Prepaid)
- Fax
- Overnight Delivery
- Hand Delivery
- Email

/s/ Scott P. Klosterman
Scott P. Klosterman