

David G. Ditto, No. 5-2641
Associated Legal Group, LLC
1812 Pebrican Ave.
Cheyenne, WY 82001
dditto@ALGLaw.us
Tel: (307) 632-2888
Fax (307) 632-2828

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In re Black Hills Bentonite)	
Permit to Mine No. 248C)	
(Herco Amendment))	Docket No. 17-1601
)	

PETITIONER'S PREHEARING DISCLOSURE STATEMENT

Petitioner, Black Hills Bentonite, provides the following disclosures pursuant to Chap. 2 Sec. 18 of DEQ Practice and Procedure for Contested Case Hearings and in accordance with the Scheduling Order.

(i) Witnesses.
Petitioner will call the following witnesses:

Tom Thorson
Black Hills Bentonite
P.O. Box 9
Mills, WY 82644
(307) 265-3740

Mr. Thorson is the President of Black Hills Bentonite. He has knowledge of and may testify regarding communications with Respondent Jim Crossingham and other employees and agents of TTT Ranch Company, negotiations and communications with Mr. Crossingham for surface owner consent, the history of and work and reclamation on the TTT Ranch, documents provided to Mr. Crossingham in support of BHB's Herco Amendment application, discussions of mining, reclamation, damage payments, surface use for ranching purposes, work done by BHB in lieu of damage payments and related matters. He may also testify regarding existing contracts between Petitioner and

Respondent, payments made to Respondent under such contracts, and BHB's existing mining claims and rights associated with the same. Mr. Thorson may provide other testimony as needed, and may provide rebuttal testimony in response to issues raised by Respondent.

Petitioner may call the following witnesses:

Doug Gibson
Black Hills Bentonite
P.O. Box 9
Mills, WY 82644
(307) 234-6470

Mr. Gibson is an Environmental Technician for Black Hills Bentonite. Mr. Gibson has knowledge of and may testify regarding his communications with Respondent, including his letters to Respondent with the mining and reclamation plans, Respondent's failure to respond to same, documents provided to Mr. Crossingham in support of BHB's Herco Amendment application, follow-up correspondence and related matters. He may also testify regarding the content of the mining and reclamation plans. Mr. Gibson may provide other testimony as needed, and may provide rebuttal testimony in response to issues raised by Respondent.

Bruce Lawson
Black Hills Bentonite
P.O. Box 9
Mills, WY 82644
(307) 234-3740

Mr. Lawson is reclamation manager of Black Hills Bentonite. He has knowledge of and may testify regarding communications with Respondent Jim Crossingham and other employees and agents of TTT Ranch Company, negotiations and communications with Mr. Crossingham for surface owner consent, the history of and work and reclamation on the TTT Ranch, documents provided to Mr. Crossingham in support of BHB's Herco Amendment application, discussions of mining, reclamation, damage payments, surface use for ranching purposes, work done by BHB in lieu of damage payments and related matters. He may also testify regarding existing contracts between Petitioner and Respondent, payments made to Respondent under such contracts, and BHB's existing mining claims and rights associated with the same. He may also testify regarding the content and detail of the mining and reclamation plans, DEQ/LQD requirements and, to the extent necessary, historic reclamation practices. Mr. Lawson may provide other testimony as needed, and may provide rebuttal testimony in response to issues raised by Respondent.

Bob Perry
Retired from Black Hills
41 Turkey Lane
Buffalo, WY 82834
(307) 620-9321

Mr. Perry is the former mine manager for Black Hills Bentonite, now retired. Mr. Perry has knowledge of and may testify regarding communications with Respondent Jim Crossingham and other employees and agents of TTT Ranch Company, negotiations and communications with Mr. Crossingham, the history of and work and reclamation on the TTT Ranch, discussions of mining, reclamation, damage payments, surface use for ranching purposes, work done by BHB in lieu of damage payments and related matters. He may also testify regarding contracts between Petitioner and Respondent during the time of his employ, payments made to Respondent under such contracts. Mr. Perry may provide other testimony as needed, and may provide rebuttal testimony in response to issues raised by Respondent.

Alan Rabinoff
c/o counsel for Petitioner
1812 Pebrican Ave.
Cheyenne, WY 82001
(307) 632-2888

Mr. Rabinoff is a former BLM Certified Mineral Examiner with more than 41 years of experience related to federal lands, mining and the validity of mining claims. Petitioner previously filed a report authored by Mr. Rabinoff and fully incorporated herein by reference. Mr. Rabinoff is a geologist, former Branch Chief of Mining Law Administration in Salt Lake City, Utah, and Deputy State Director, Minerals and Land in Cheyenne, Wyoming. Mr. Rabinoff has testified as an expert witness on behalf of the United States before the Department of Interior, Office of Hearings and Appeals, to determine the validity of mining claims, and whether such claims met regulatory requirements under the mining laws.

To the extent the validity or precedence of Petitioner's right to mine within the Bobcat #10 and TTT #10 mining claims are challenged, Mr. Rabinoff will testify that the Bobcat #10 and TTT #10 mining claims are active and valid, and that such mining claims are senior to mining claims in the same lands made by others, including claims made by Respondent and his agents. Mr. Rabinoff will testify in accordance and consistent with his report filed earlier in this matter. Mr. Rabinoff may provide other testimony as needed, and may provide rebuttal testimony in response to issues raised by Respondent.

Larry Madsen
Black Hills Bentonite
P.O. Box 9
Mills, WY 82644
(307) 265-3740

Mr. Madsen is the Vice President and Chief Financial Officer of Black Hills Bentonite. He has knowledge of and may testify regarding payments made to Respondent for royalties and surface damages. He may also testify regarding communications with Respondent Jim Crossingham and other employees and agents of TTT Ranch Company, negotiations and communications with Mr. Crossingham for surface owner consent, the history of and work and reclamation on the TTT Ranch, documents provided to Mr. Crossingham in support of BHB's Herco Amendment application, discussions of mining, reclamation, damage payments, surface use for ranching purposes, work done by BHB in lieu of damage payments and related matters. He may also testify regarding existing contracts between Petitioner and Respondent, payments made to Respondent under such contracts. Mr. Madsen may provide other testimony as needed, and may provide rebuttal testimony in response to issues raised by Respondent.

(ii) Statement of claims, defenses and issues:

Petitioner seeks an order in lieu of surface owner consent pursuant to W.S. §35-11-406(b). Black Hills owns minerals or has the right to mine for bentonite in several locations on land, the surface of which is owned by Respondent. Crossingham has denied access to Black Hills. Black Hills claims that it has met the following requirements under W.S. §35-11-406(b):

(A) That the mining plan and the reclamation plan have been submitted to the surface owner for approval;

(B) That the mining plan and the reclamation plan is detailed so as to illustrate the full proposed surface use including proposed routes of egress and ingress;

(C) That the use does not substantially prohibit the operations of the surface owner;

(D) The proposed plan reclaims the surface to its approved future use, in segments if circumstances permit, as soon as feasibly possible;

Respondent raises a number of defenses set forth in its Response to the Petition, most of which are unrelated to the above elements and should not be entertained by the Council. Respondent does argue that the mining will substantially prohibit operations of the surface owner.

(iii) Statement of burden of proof:

Pursuant to W.S. §35-11-406(b), Petitioner bears the burden of proof on each of the four issues listed above. Respondent bears the burden of proof on defenses raised by Respondent.

(iv) Statement of stipulated facts

The parties are still in the process of discussing stipulations. Petitioner agrees with the following statements and admissions in Respondent's Response to the Petition:

1. TTT Ranch Company owns the entire surface within the Herco Amendment;
2. TTT Ranch Company and Crossingham own no mineral rights within the Herco Amendment;

(v) List of all documents, statements that may be used as evidence:

Petitioner has attached hereto a list of correspondence and other documents that may be used as evidence at the hearing

(vi) Approximate time required for the hearing:

Petitioner believes that the hearing can be concluded in approximately one-half day as long as the parties limit evidence to the elements required by W.S. §35-11-406(b). Petitioner has listed witnesses and documents that are intended only for use to rebut claims and defenses raised by Respondent that have little or no relevance to the elements listed in W.S. §35-11-406(b).

DATED this 12th day of February, 2018.



David G. Ditto, No. 5-2641
Associated Legal Group, LLC
1812 Pebrican
Cheyenne, WY 82001
Tel: (307) 632-2888
Fax: (307) 632-2828

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a copy of the foregoing by email and regular, U.S. first class mail to the following on the 12th day of February, 2018, addressed as follows:

Scott Klosterman
Williams, Porter, Day & Neville, P.C.
159 North Wolcott, Suite 400
P.O. Box 10700
Casper, WY 82602-3902



David G. Ditto

Petitioner's Exhibit List

Docket No. 17-1601

NO.	DESCRIPTON	NOTES	WITNESS
1	September 11, 2012 letter from Jim Crossingham to Tom Thorson		
2	October 22, 2012 letter from Larry Madsen to Jim Crossingham		
3	October 22, 2012 letter from ALG Law to Tom Thorson and Larry Madsen		
4	October 16, 2015 Letter from Tom Thorson to Jim Crossingham re proposed Surface Use and Damage Agreement		
5	Nov 6 2015 letter from Jim Crossingham to Tom Thorson re request for additional information		
6	Dec 15 2015 letter from Tom Thorson to Jim Crossingham with documents requested		
7	Feb 26 2016 letter from ALG to Jim Crossingham re follow-up from earlier letters, threat to file petition with EQC		
8	Mar 23 2016 letter from Jim Crossingham to Tom Thorson re lack of mining and reclamation plan, and request for surface use payments		
9	Mar 28 2016 letter from Bruce Lawson to Jim Crossingham with attachments re Bobcat #10		
10	Apr 14 2016 letter from Jim Crossingham to Bruce Lawson		
11	Apr 14 2016 letter from Jim Crossingham to Tom Thorson		
12	Apr 20 2016 letter from Tom Thorson to Jim Crossingham		

Petitioner's Exhibit List**Docket No. 17-1601**

NO.	DESCRIPTON	NOTES	WITNESS
13	Jan 31, 2017 letter from TT to JC		
14	Feb 1, 2017 letter from DG to JC re revised Snyder Ranch Amendment with mining and reclamation plans		
15	March 10, 2017 letter from DG to JC re second request and copy of mining and reclamation plans		
16	March 22 2017 letter from JC to TT re proposed Agreement		
17	March 24 2017 letter from TT to JC		
18	Apr 24 2017 letter from ALG to JC re refusal to provide landowner consent to sections 11 and 13		
19	May 1 2017 letter from JC to TT		
20	May 4, 2017 letter from ALG to Jim Crossingham re May 1 letter		
21	May 12 2017 letter from TT to JC		
22	May 16, 2017 letter from Jim Crossingham to Tom Thorson		
23	May 31, 2017 letter from Doug Gibson to Jim Crossingham re DEQ will not accept modified Form 8		
24	June 12 2017 letter from Doug Gibson to Jim Crossingham re Form 8		
25	June 15, 2017 letter from Doug Gibson to Jim Crossingham with mining and reclamation plans		
26	Aug 21 2017 letter from ALG to JC re Herco Amendment		

Petitioner's Exhibit List

Docket No. 17-1601

NO.	DESCRIPTON	NOTES	WITNESS
27	April 30, 2013 Assignment of TTT #10 and TTT #11		
28	Copies of checks for annual payment for Assignment, from June 2013 – April 2017 \$15,000 annually for total of \$75,000		
29	Bobcat #10 Patent		
30	Location Notice and & Certificate of Bentonite Placer Mining Claim		
31	Aug 15, 2016 Lease Agreement		
32	Bobcat #10 NOITL Documents		
33	TTT Ranch Company Deed		
34	1982 Mineral Deed		
35	Herco Mineral Deed		
36	Form 8 – Snyder Amendment		
37	Memorandum – Grant of ROW for access road		
38	Expert Report and documents attached thereto		
39			

Petitioner's Exhibit List

Docket No. 17-1601

NO.	DESCRIPTON	NOTES	WITNESS
40			
41			
42			
43			
44			
45			
46			
47			
48			