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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 OBJECTION TO IMMATERIAL,
IRRELEVANT AND INAPPROPRIATE EVIDENCE**

Petitioner Black Hills Bentonite ("Black Hills") objects to certain immaterial, irrelevant and inappropriate evidence expected to be introduced by Respondents at the Thursday hearing, and as grounds therefore states as follows:

Respondents, TTT Ranch Company ("TTT Ranch") and James Crossingham Jr. ("Crossingham") have listed, in their Prehearing Disclosure Statement, numerous objections to Black Hills' Petition for an Order in Lieu of Landowner Consent. In support of the objections Respondents cite to various DEQ/LQD requirements in W.S. §§35-11-406(a) and (b) relating to **sufficiency of mining applications**. The objections are based not upon the requirements for an order in lieu of consent under W.S. §35-11-406(b)(xii), but on the statutory requirements for approval of a mining permit by the DEQ/LQD. The

DEQ/LQD has not accepted the Herco Amendment Application for review, and will not do so until Respondents sign a Form 8, or this Council grants an Order in Lieu of Consent.

Respondents' objections are directed to the Herco Amendment Application rather than the Petition filed in this matter. The DEQ/LQD is charged with the responsibility of reviewing statutory requirements for issuance of a mining permit under W.S. §§35-11-406(a) and (b), other than the requirements for an order in lieu of consent. Not only is the DEQ/LQD charged with that responsibility, but the DEQ/LQD has the experience and expertise required to determine whether such requirements have been met.

Respondents are in error as follows. First, Respondents mischaracterize many of the DEQ/LQD requirements for a mining application. Second, Respondents ask this Council to interpret and rule on the DEQ/LQD application requirements. For example, Respondents readily acknowledge that they own no minerals in the Herco Amendment area, yet argue that Black Hills has failed to show that it has a legal right under W.S. §35-11-406(a)(ii) to mine the minerals identified in the Application. Respondents likewise argue that Black Hills has made misrepresentations in its Application under W.S. §35-11-406(a)(iv); that Black Hills failed to list all mining claim owners in its Application under W.S. §35-11-406(a)(iv); that Black Hills has failed to show in its Application the location and extent of the land to be affected under W.S. §35-11-406(b)(v); that Black Hills failed to propose a procedure to avoid constituting a public nuisance, endangering the public safety, human or animal life, and property in and adjacent to the permit area under W.S. §35-11-406(b)(xiii), as well as other complaints relating to the substance of the Herco Amendment Application.

On Sunday, February 18, Respondents filed their Notice of Additional Exhibit S, apparently proposing to use the DEQ/LQD Herco Amendment Application as an exhibit at the hearing. The application requirements are not on trial and will be reviewed by the DEQ/LQD. By raising objections based on statutory requirements that are within the province of the DEQ/LQD review, Respondents are asking this Council to usurp the role of the DEQ/LQD and to determine the sufficiency of the Application. This Council should not entertain objections based on statutory requirements under purview of the DEQ/LQD. It would be a waste of time and judicial resources for this Council to entertain issues and requirements that will be addressed by the DEQ/LQD.

The issues to be heard by the Council should be limited to the notice provided to Respondent, submission of the mining and reclamation plans to Mr. Crossingham, whether the mining will “substantially prohibit” operations on the surface, and whether the reclamation plan restores the surface in segments, as soon as feasibly possible.

Exhibit S, the Herco Amendment Application, and all objections based upon application requirements should be disallowed for all of the reasons stated above.

RESPECTULLY SUBMITTED this 18th day of February, 2018.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a copy of the foregoing by email to the following on the 18th day of February, 2018, addressed as follows:

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