

Isaac N. Sutphin (Wyo. State Bar No. 6-3711)  
Jeffrey S. Pope (Wyo. State Bar No. 7-4859)  
HOLLAND & HART LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
insutphin@hollandhart.com  
jspope@hollandhart.com

ATTORNEYS FOR CONTURA COAL WEST, LLC

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

IN RE CONTURA COAL WEST, LLC –	)	OAH Docket No. 19-004-220
PT0214	)	
	)	Docket No.18-4803
	)	Consolidated with 18-4805
	)	

---

**CONTURA COAL WEST, LLC MOTION *IN LIMINE* TO EXCLUDE TESTIMONY  
ABOUT LAND APPRAISAL AND LAND VALUATION**

---

**INTRODUCTION**

In part, the evidentiary hearing in this matter will address whether real estate used as collateral for reclamation bonding in Contura Coal West, LLC’s (Contura) permit renewal and Blackjewel, LLC’s (Blackjewel) transfer application is sufficiently valuable to cover certain bond obligations. The only reliable method to determine the value of real estate, is through an appraisal. The appraisal of the real property is a specific field that requires expertise, training, and specialized knowledge to do properly. As result, any evidence related to appraising real property is expert testimony. Here, a party must have designated an expert witness pursuant to the Rules of Civil Procedure and the Council’s Scheduling Order. Powder River Basin Resource Council (PRBRC) failed to designate any experts. Therefore, the Council should preclude

PRBRC from offering any testimony or evidence about the value of property used as collateral for Contura's and Blackjewel's reclamation bonding.

### RELEVANT FACTS

In renewing its permit for the Belle Ayr Mine, Contura offered two ranches as real estate collateral to cover portions of its reclamation bond. Wyoming law permits this type of bonding. Wyo. Stat. Ann. § 35-11-417(d); DEQ Regulations Ch. 11 § 3(c)(i). To support the use of this real estate as collateral, Contura had the property appraised to show it was worth enough to cover portions of the reclamation bond. When Contura sold the Belle Ayr Mine and Eagle Butte Mine to Blackjewel and began the process of transferring the relevant permits, the parties again offered the two ranches as collateral for reclamation bonding.

In its objections to Contura's permit renewal and the permit transfer from Contura to Blackjewel, PRBRC alleges that real estate used as collateral for parts of the respective reclamation bond is not valuable enough to cover the bond. (*See* PRBRC Objections and Petition for Hearing (Dkt. 4805), attached as Ex. 1, pp. 3-5; PRBRC Objections and Petition for Hearing (Dkt. 4803), attached as Ex. 2, pp. 3-5.) PRBRC also alleges that the real estate appraisal supporting the use of the real estate as collateral cannot support the valuation of the real estate. (*Id.*)

Despite objecting to the sufficiency of the appraisal and receiving a confidential copy under the Council's protective order, PRBRC did not designate any expert witnesses at the time set out in the Council's scheduling order. Instead, PRBRC disclosed that its attorney, Shannon Anderson, researched and analyzed land values. (PRBRC Discovery Responses, attached as Ex.

3.) But she will not be a witness at the hearing and PRBC has not designated a witness qualified to opine about the appraised values of the ranches..

### ARGUMENT

“If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue,” a party must designate an expert witness qualified “by knowledge, skill, experience, training, or education” to offer opinions. Wyo. R. Evid. 702. Before a party can have an expert testify, they must disclose the identity of the expert and provide a written report that contains: the expert’s opinions; facts and data used by the expert; supporting exhibits; expert’s qualifications; list of prior testimony; and fees. Wyo. R. Civ. P. 26(a)(2). The party must do this by the date the Court, or the Council, orders. *Id.* If a party fails to disclose an expert, then the party cannot use a witness or information that should have been disclosed at a hearing. Wyo. R. Civ. P. 37(c)(1).

Here, PRBC has challenged the appraised value of the real property used as collateral for the reclamation bond supporting Contura’s permit renewal and permit transfer to Blackjewel. (Ex. 1 at 3-5.) That challenge centers on the appraisal the Department of Environmental Quality used in making its decisions on the permit renewal and transfer.

To conduct an accurate land appraisal, a person must have expertise in several areas. The person must know the market for land in the area where the appraised property is located. The person must know methods for comparing the types of land considered in an appraisal. The person must know the specific characteristics of the land. The person must know how the characteristics of the land affect its value. The person should know and comply with the Uniform Standards of Professional Appraisal Practice. *See Wallop v. Wallop*, 2004 WY 46, ¶ 9, 88 P.3d

1022, 1025 (Wyo. 2004) (rejecting appraisal for failing to follow industry standards). In fact, Wyoming requires people who do business as a real estate appraiser to get a license and comply with industry standards. *See* Wyo. Stat. Ann. §§ 33-39-101 et. seq. As a result, testimony about land valuation and land appraisal requires specialized knowledge that only an expert can offer.

For PRBRC to introduce any evidence about the appraisal, they needed to: 1) have an expert competent to testify; and 2) disclose that expert consistent with the Rules of Civil Procedure outlined above. PRBRC did not disclose any experts or provide a written report. Through discovery Contura learned that Shannon Anderson, PRBRC's attorney, conducted PRBRC's analysis of Contura's property. (Ex. 3 at 8, 9.) But Ms. Anderson's resume reveals she has no experience or expertise in land valuation or appraisals nor is she licensed or recognized as a real estate appraiser in Wyoming or any other state. (Resume of Shannon Anderson attached as Ex. 4.) As a result, PRBRC has no expert to testify about the appraised value of the collateral.

Therefore, the Council should exclude all testimony and evidence from PRBRC that addresses the appraisal, including the method, opinions, and conclusions in the appraisal. Likewise, all testimony generally about land valuation and comparative land values should be excluded because those speak to the ultimate conclusions in the appraisal.

### **CONCLUSION**

PRBRC's lack of a properly disclosed expert means the Council should prevent PRBRC from offering: 1) any testimony about the appraisal done by Robert Brockman; 2) any testimony that discusses the appraised value of the property used as collateral for the reclamation bond; 3) any documents that discuss the appraised value of the property used as collateral for the reclamation bond; and 4) any testimony or documents about comparative land values. Therefore,

Contura respectfully requests the Council enter an order precluding PRBRC from offering any such evidence.

DATED: April 15, 2019.

*/s/ Jeffrey S. Pope*

---

Isaac N. Sutphin (Wyo. State Bar No. 6-3711)

Jeffrey S. Pope (Wyo. State Bar No. 7-4859)

HOLLAND & HART LLP

2515 Warren Avenue, Suite 450

P.O. Box 1347

Cheyenne, WY 82003-1347

Telephone: (307) 778-4200

insutphin@hollandhart.com

jspope@hollandhart.com

ATTORNEYS FOR  
CONTURA COAL WEST, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on April 15, 2019, I served the foregoing by placing a true and correct copy via E-mail to the following:

Shannon Anderson  
Powder River Basin Resource Council  
934 N. Main Street  
Sheridan, WY 82801

James Kaste, Deputy Attorney General  
Wyoming Attorney General's Office  
Pioneer Building, 2nd Floor  
2424 Pioneer Avenue  
Cheyenne, WY 82002

S. Thomas Throne  
Jason D. Wasserburger  
Thorne Law Office, P.C.  
P.O. Box 6590  
Sheridan, WY 82801

Bernard Haggerty, Hearing Examiner  
State of Wyoming  
Office of Administrative Hearings  
2020 Carey Avenue, Fifth Floor  
Cheyenne, WY 82002-0270

*/s/ Jeffrey S. Pope* \_\_\_\_\_