

Shannon Anderson (Wyo. Bar No. 6-4402)
Powder River Basin Resource Council
934 N. Main St., Sheridan, WY 82801
sanderson@powderriverbasin.org
(307) 672-5809

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
UPON REFERRAL FROM THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In re Applications for Coal Mine Permit)	OAH Docket No. 19-004-220
Transfers – PT0214 & PT0428)	
Blackjewel, LLC)	EQC Dockets No. 18-4805 &
)	18-4803
In re Permit Renewal Application)	
Contura Coal West – PT0214)	
)	

POWDER RIVER BASIN RESOURCE COUNCIL RESPONSES TO CONTURA COAL WEST’S COMBINED SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS

INTERROGATORIES

Interrogatory No. 1: Please identify the specific tracts of land used as comparable real property parcels and describe in detail the review you conducted on comparable real property parcels as described in Paragraph 19 of your Petition to the Environmental Quality Council for a Hearing on Objections to the Renewal of Contura Coal West, LLC’s Coal Mine Permit for the Belle Ayr Mine, PT0214, dated November 16, 2018 and filed with the Environmental Quality Council (“EQC”) in Docket No. 18-4803 (consolidated with EQC Docket No. 18-4805) on November 19, 2018 (“Petition”). Include in that description who conducted the review of comparable parcels, their title, job description, and a description of all previous appraisals they have performed on real property of any type within the last ten years.

Answer: To the extent that this interrogatory calls for any legal conclusions, we object. Additionally, we remind Contura that it is not our burden of proof at the hearing and to the extent that this interrogatory calls for any admissions about the evidentiary basis for Contura's permit renewal to be granted, we object.

Notwithstanding those general objections, we refer Contura to page 3 of the Objections and the documents attached to the Objections.

In preparing the Objections, Powder River Basin Resource Council Staff Attorney Shannon Anderson conducted a search on the website "LandWatch" which has real estate listings for rural property (see https://www.landwatch.com/Wyoming_land_for_sale/Campbell_County) . Ms. Anderson conducted a search for Crook, Weston, and Campbell Counties on the LandWatch website. The results of those searches were attached to the Objections and they speak for themselves. The results show that no land is for sale in those counties for the amount estimated to be the value of the Contura parcels. Ms. Anderson also reviewed other publicly available real estate listings for high quality ranch land property in Northeast Wyoming, including the Holy Cow Ranch. The brochure for the Holy Cow Ranch was attached to the Objections. While this review was not a comprehensive analysis of comparable real estate, the search results raised significant questions about the marketing and sale potential for the property held by Contura if DEQ would be forced to sell the property to collect on the bond.

Additionally, Powder River Basin Resource Council Executive Director Jill Morrison contacted Brent Brooks of Brooks Appraisals (see emails produced in response to Requests for Production). However, without the benefit of being able to see Contura's appraisal, and given the very complicated legal description for the property held by Contura, it was impossible for the

Powder River Basin Resource Council to hire a third-party consultant like Mr. Brooks to conduct an appraisal or more comprehensive review of comparable land parcels.

Interrogatory No. 2: Please describe in detail Robin Bagley's duties and role as a staffer for the Powder River Basin Resource Council.

Answer: Robin Bagley is the Communications & Development Director for Powder River Basin Resource Council. She directs the organization's communication efforts, including media relations, press releases, publication of factsheets and other materials, and oversees the social media channels. She is editor for our bi-monthly newsletter and manages the website. She works in development, writing grants proposals and reports as well as other fundraising activities, including events and membership communication.

Interrogatory No. 3: Please specifically identify those individuals, including without limitation their job titles and contact information, that Robin Bagley spoke with as part of the work performed as set out in your Petition and Objections and Petition for Hearing on the Proposed Transfer of Coal Mine Permits PT0214 (Belle Ayr Mine) and PT0428 (Eagle Butte Mine) from Contura Coal West to Blackjewel, LLC, dated November 28, 2018 and filed with the EQC in Docket No. 18-4805 on November 30, 2018 ("Objections").

Answer: Ms. Bagley answers as follows: "When I visited the Campbell County Courthouse Friday, November 9 and Tuesday, November 13, 2018 I did not ask any staff members' names nor were they wearing name tags. I told the staff person behind the front desk what I was looking for and she directed me to the records room. Different staff members assisted me in finding the correct books and using the public computer."

Interrogatory No. 4: Please identify and describe the applicable appraisal industry standards you employed in reviewing and analyzing comparable real property parcels, as set out in your Petition and Objections.

Answer: No one employed by or contracting with the Powder River Basin Resource Council conducted an appraisal in preparation for the Petition and Objections, and as such, no applicable appraisal industry standards were used.

Interrogatory No. 5: Please provide all the facts supporting your assertion that, “This likely means the state is unprotected and the bond may not meet requirements of DEQ’s regulations” as set forth in Paragraph 19 of your Objections.

Answer: Notwithstanding that this question calls for a legal conclusion, as stated in paragraph 22 of the Petition, DEQ Coal Rules & Regulations Ch. 11 § 1(b)(i) require “A perfected, first lien security interest in real property located within the State of Wyoming, in favor of the Wyoming Department of Environmental Quality.” Perfection is a legal term of art, and for liens, perfection generally means the lien has been filed in a way to give other potential creditors, prospective buyers, and others notice of the lien. Since the vast majority of the property is located in Campbell County, the lien should be filed with the Campbell County Clerk’s Office for inclusion in the county’s land records books in order to perfect it. As discussed in the Objections and Petition, Ms. Bagley was unable to find a perfected lien in the Campbell County land records books.

Perfection of the lien is particularly important here, where Blackjewel has delinquent taxes and the county itself may have a lien against some of the company’s property.

Interrogatory No. 6: Please explain the facts and/or law that you rely upon to assert in Paragraphs 29 through 37 of your Objections that all of Revelation Energy’s violations that may appear in an AVS search must impute to Blackjewel, which you claim renders Blackjewel “ineligible and unqualified to receive a coal mining permit.”

Answer: To the extent that this question calls for a legal conclusion, we object. Notwithstanding that objection, we refer Contura to the statutes and regulations cited in our Objections and Petitions, including section 408 of the Wyoming Environmental Quality Act, which provides that “The potential transferee shall file with the administrator a statement of qualifications to hold a permit as though he were the original applicant for the permit” and sections 406(a)(xiv) and 406(n)(vii) discussed in paragraph 29 of the Petition for Docket No. 18-4805. We also refer Contura to DEQ’s (and OSMRE’s) ownership and control regulations, which explain the phrase “all surface coal mining operations owned or controlled by the applicant” used in section 406(n)(vii). As discussed in the Petition, and as supported by the Secretary of State filing attached to the Petition, Blackjewel and Revelation Energy are under common ownership by Jeff Hoops. In fact, in the Blackjewel, LLC Secretary of State filing attached to the Petition, Mr. Hoops used a Revelation Energy email address.

As support for our objections, we also refer Contura to DEQ’s AVS searches related to the proposed permit transfer, which searched for and found violations from Revelation Energy. These AVS searches are available via the DEQ permit file on the EQC website (for instance, see DEQ Ex. 3 at 42) and via the DEQ’s public records site:

<https://wydeq.nextrequest.com/requests/18-271> (for instance, see the June 12, 2018 email from Kim Pandullo to Kyle Wendtland with the subject line “Blackjewel, LLC AVS”).

Interrogatory No. 7: Please identify who conducted the research referenced in Paragraphs 36 and 37 of your Objections.

Answer: Paragraphs 36 and 37 of the Objections Petition for Hearing for Docket No. 18-4805 were written by Powder River Basin Resource Council Staff Attorney Shannon Anderson based on information she researched and compiled using a simple google search for “Revelation Energy” and “Jeff Hoops”. As stated in the Petition, the evidentiary basis supporting the narrative contained in the paragraphs was attached as Exhibit 9. The content of Exhibit 9 speaks for itself.

Interrogatory No. 8: Please identify the names, addresses, and telephone numbers of all witnesses who you believe have, or who claim to have, any knowledge whatsoever of any fact relating to your claims in this matter.

Answer: The facts relied upon in preparation of our objections were almost exclusively facts contained in the permit renewal and transfer applications, correspondence with DEQ staff about the applications, and statements or representations made by Blackjewel agents in the press, all of which are already known to Contura, its counsel, and its agents. Our objections were also based on the personal knowledge of our staff, Shannon Anderson, Robin Bagley, and Jill Morrison.

In some of the emails provided in response to the Requests for Production below, you will see the names “Dan Cohn” “Bob LeResche” and “Hesid Brandow.” Mr. Cohn is a regional organizer at the Western Organization of Resource Councils, a network of which the Powder River Basin Resource Council is a member organization. Mr. Cohn provided early information

and research related to Blackjewel and Contura, but that information was post-dated by original research conducted by Ms. Anderson for the Objections and Petition. Ms. Brandow is an organizer for the Powder River Basin Resource Council. She did not provide information or research, but she was included on some of the earlier email correspondence. Mr. LeResche is the Powder River Basin Resource Council Vice-Chair and sits on the Board of Directors. Mr. LeResche was consulted in an attorney-client manner throughout our review of the permit renewal and transfer applications, but not did independently provide any facts, research, or information used in preparation for the Objections or Petition.

DEQ staff members identified in the emails associated with these permit dockets, available through <https://wydeq.nextrequest.com/requests/18-271>, also have knowledge of the facts in these matters, as does Jeff Hoops, CEO of Blackjewel.

Interrogatory No. 9: Please provide the names, addresses, and telephone numbers, as well as job titles, of the persons who are responding to these interrogatories and requests for production of documents. Please state the source for their responses to each answer and identify the interrogatory or request answered by each person.

Answer: Please see the attached certifications provided by Ms. Anderson, Ms. Morrison, and Ms. Bagley. All three staff members of Powder River Basin Resource Council are available at 934 N. Main St. Sheridan, WY 82801 and (307) 672-5809. Please see above for the titles for Ms. Anderson, Ms. Bagley, and Ms. Morrison. The responses to the interrogatories were made based on personal knowledge and experience. The production requests were fulfilled through a search of Ms. Anderson's, Ms. Morrison's, and Ms. Bagley's emails, files, and correspondence.

REQUESTS FOR PRODUCTION

Request for Production No. 1: Please produce all documents supporting any of your responses to the interrogatories above.

Response: As stated above, the supporting documents were already provided to Contura through exhibits and attachments included with the Objections and Petitions. We also refer Contura to DEQ's Exhibits 1-3 available on the EQC website and the emails provided in <https://wydeq.nextrequest.com/requests/18-271>. This information is too voluminous to attach, but it is readily available for Contura to download.

Request for Production No. 2: Please produce all documents that you used in, during, or to support your review of comparable real property parcels, as described in Paragraph 19 of your Petition.

Response: Please see the answer to Interrogatory No. 1 above, and the attachments to our Objections.

Request for Production No. 3: Please produce all documents that support the contentions in Paragraph 20 of your Petition.

Response: Please see Exhibits 5 and 6 to the Petition. The exhibits are a printed version of parcel details arrived at from a search on the Campbell County Assessor website:

<https://propertysearch.ccgov.net/assessor/index.html> Ms. Anderson searched for "Contura" under "Owner Name" and the two parcels were the only two that resulted from the search. See the screenshot below.



New Search

Search Results

Select a Property

Parcel #	Owner	Street Address	Legal Description
10871	CONTURA WYOMING LAND LLC	CLARETON HWY	SW,SWNW
12498	CONTURA WYOMING LAND LLC	125 HOE CREEK RD	W2, S2NE

Request for Production No. 4: Please produce the CV and resume of whoever conducted the review of comparable parcels.

Response: Please see attached the resume of Ms. Anderson.

Request for Production No. 5: Please produce all communications you sent to anyone or received from anyone about the renewal of Contura’s coal mining permit for the Belle Ayr Mine, at issue in EQC Docket No. 18-4803 (consolidated with EQC Docket No. 18-4805).

Response: Powder River Basin Resource Council objects to the scope of this question as it is overbroad and the burden to respond outweighs the likely benefit of relevant and discoverable information. We also object to providing the content of privileged attorney-client communications or communications made, meetings attended, or other interactions with our organization allowing an individual (or group of individuals) to exercise the right to associate under the 1st and 14th Amendments to the U.S. Constitution. Communications not falling within the scope of the aforementioned privileges are attached.

Request for Production No. 6: Please produce all communications you sent to anyone or received from anyone about the transfer of Contura's coal mining permit for the Belle Ayr Mine to Blackjewel, at issue in EQC Docket No. 18-4805.

Response: Powder River Basin Resource Council objects to the scope of this question as it is overbroad and the burden to respond outweighs the likely benefit of relevant and discoverable information. We also object to providing the content of privileged attorney-client communications or communications made, meetings attended, or other interactions with our organization allowing an individual (or group of individuals) to exercise the right to associate under the 1st and 14th Amendments to the U.S. Constitution. Communications not falling within the scope of the aforementioned privileges are attached.

Request for Production No. 7: Please produce all documents demonstrating that the Wyoming Department of Environmental Quality has ever imputed violations of a non-permittee or non-applicant to a company who is applying for a coal mining permit or seeking to transfer an existing coal mining permit.

Response: DEQ records not in possession of the Powder River Basin Resource Council cannot be provided. We refer Contura to the answer to Interrogatory No. 6 above and the emails available through <https://wydeq.nextrequest.com/requests/18-271>

Respectfully submitted this 14th day of March, 2019.

/s/ Shannon R. Anderson
Shannon Anderson (Wyo. Bar No. 6-4402)
Powder River Basin Resource Council
934 N. Main St., Sheridan, WY 82801
sanderson@powderriverbasin.org
(307) 672-5809 (o) (307) 763-0995 (c)

Attachments: signed certifications of Ms. Anderson, Ms. Bagley, and Ms. Morrison.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of March, 2019, the foregoing **RESPONSES TO CONTURA COAL WEST'S COMBINED SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS** was provided via electronic file transfer to:

Jeffrey Pope
Isaac Sutphin
Holland & Hart, LLP
2515 Warren Ave., Suite 450
Cheyenne, WY 82001
INSutphin@hollandhart.com
jspope@hollandhart.com
Counsel for Contura

James Kaste
Wyoming Attorney General's Office
Pioneer Building, 2nd Floor
2424 Pioneer Avenue
Cheyenne, WY 82002
james.kaste@wyo.gov
Counsel for the DEQ

S. Thomas Throne
Jason Wasserburger
Throne Law Office
P.O. Box 6590
Sheridan, WY 82801
tthrone@thronelaw.com
JWasserburger@thronelaw.com
Counsel for Blackjewel, LLC

/s/Shannon R. Anderson
Shannon Anderson