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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’S RESPONSE TO CONTURA COAL WEST’S MOTION *IN LIMINE* TO EXCLUDE TESTIMONY ABOUT LAND APPRAISAL AND LAND VALUATION

The Powder River Basin Resource Council (“Resource Council”) hereby responds to Contura Coal West’s (Contura) motion *in limine* to exclude testimony – and exhibits – about land appraisals and land valuation.

INTRODUCTION

A main issue presented for the upcoming hearing is whether Contura, and its proposed permit successor Blackjewel, have met the requirements for coal mine reclamation bonding in order to approve permit renewal and transfer for the Belle Ayr Mine. At issue is the company’s use of real property as collateral to guarantee reclamation costs. It is critical under Wyoming coal mine bonding law that the full amount of the company’s reclamation bond be covered through the real property collateral and other financial assurance instruments.

As such, evidence and testimony related to the value of the land used as collateral will be critical to the Environmental Quality Council's review of the issues and its ultimate decision.

Contura's motion amounts to little more than smoke and mirrors. The motion is aimed to belittle the Resource Council's position to prejudge the consideration of evidence and testimony. Once again, Contura's counsel conflates a substantive decision to be made at the hearing into a preliminary procedural motion. Contura's motion should be denied for the reasons stated below.

STANDARD OF REVIEW

Under the Wyoming Rules of Civil Procedure, a motion *in limine* is a "motion relating to the exclusion of evidence." W.R.C.P. 6(c)(6). These motions can be filed "at any time" as they are responsive to proffered evidence and exhibits. *Id.* That principle is especially relevant here, where hearing exhibits have not yet been filed by any party, including the Resource Council.

Although the Environmental Quality Council's rules of practice and procedure generally provide application of the Wyoming Rules of Civil Procedure, its rules for contested case hearings do not incorporate W.R.C.P. 6. *See* Rules of Practice and Procedure Ch. 2 §§ 2, 26. As such, the Council's rules of practice do not contemplate a motion *in limine*. Nevertheless, should the Council entertain a motion *in limine*, the motion must be reviewed under its rules of practice and procedure, which establish that "[e]vidence of the type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible" and "[i]rrelevant, immaterial, or unduly repetitious evidence shall be excluded." *Id.* at § 20(a)(i).

This more lenient standard for admitting evidence at a contested case hearing is particularly appropriate here, where the hearing is the first and only opportunity for a public hearing on the permit renewal and transfer applications. *See* W.S. § 35-11-406(k).

ARGUMENT

Contura's motion is untimely and without legal basis, and it should be denied.

1. Contura's Motion is Untimely

As discussed above, a motion *in limine* is a motion to exclude evidence or testimony. As the name suggests, a motion *in limine* is filed prior to or at the beginning of a hearing, but it is an extraordinary remedy, and it is untimely if the evidence and testimony to which it objects has not yet been proffered. *See Young v. State*, 2016 WY 70 ¶ 6, 375 P.3d 792 (2016) (upholding the denial of a motion *in limine* but allowing an objection at the time the evidence was presented at trial).

Here, the Resource Council will file, along with other parties, exhibits as required by the scheduling order for this hearing on or before May 8, 2019. No exhibits have been filed yet. Contura's motion to exclude exhibits that have not yet been filed is untimely. Contura can, if it so chooses, bring forward its objections at the appropriate time prior to the hearing, but such objections are premature now.¹

Ruling on Contura's motion now would be prejudicial to the Resource Council because it would prevent the Environmental Quality Council's consideration of the relevance of any exhibits it wishes to submit on the subject at issue. At this time in the proceedings, the Environmental Quality Council cannot possibly evaluate the relevance of the yet-to-be filed exhibits.

2. Contura's Motion Ignores Exhibits Can be Discussed in Cross-Examination

Contura's motion focuses on the fact that the Resource Council did not designate its own expert to testify at the hearing. However, two experts have been designated by other parties:

¹ The Resource Council does not waive any responses to any objections yet to be made by Contura or any other party.

Robert Brockman, who conducted the appraisal submitted to the DEQ, and John Sherman, who conducted a peer review of Mr. Brockman's appraisal. Contura's motion neglects to consider that exhibits related to land value designated by the Resource Council may be used for impeachment or other purposes during the cross-examination of the companies' expert witnesses. The scope of Contura's proposed remedy identified in its motion is too broad and would unfairly limit the Resource Council from presenting exhibits and other evidence during cross-examination of the companies' witnesses.

CONCLUSION

For the forgoing reasons, Contura's motion should be denied and the admissibility of exhibits and other evidence should be evaluated at the appropriate time in the hearing process.

Respectfully submitted this 23rd day of April, 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 23rd day of April, 2019, the foregoing **RESPONSE TO CONTURA COAL WEST'S MOTION *IN LIMINE* TO EXCLUDE TESTIMONY ABOUT LAND APPRAISAL AND LAND VALUATION** was mailed to:

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