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

IN THE MATTER OF PERMIT RENEWAL)	OAH DOCKET NO. 19-004-220
APPLICATION OF CONTURA COAL)	C103
WEST, LLC.: PT0214;)	EQC DOCKET NO. 18-4803
AND IN THE MATTER OF THE)	EQC DOCKET NO. 18-4805
APPLICATIONS FOR COAL MINE)	
PERMIT TRANSERS OF BLACKJEWEL,)	
LLC.: PT0214 & PT0428.)	

**DEPARTMENT OF ENVIRONMENTAL QUALITY'S
PREHEARING DISCLOSURE STATEMENT**

The State of Wyoming, Department of Environmental Quality (DEQ), pursuant to the Hearing Examiner's March 5, 2019, *Amended Order Setting Prehearing Conference, and Setting Hearing* and the Rules of the Wyoming Department of Environmental Quality, Practice and Procedure, Chapter 2, § 18 hereby submits the following prehearing disclosure statement:

I. Witnesses who will or may testify

1. Mr. Kyle Wendtland, Administrator, Land Quality Division, Wyoming Department of Environmental Quality, 200 W. 17th St., Suite 10, Cheyenne, Wyoming 82002.

Mr. Wendtland is the Administrator of the Land Quality Division of the Department of Environmental Quality. Mr. Wendtland will testify about his education, training and experience, his duties as the Administrator, his review of the three applications at issue in these proceedings, and the decisions he made with regard to these applications. He will testify generally about the procedures the Department employs when reviewing and approving renewal and transfer applications. He will testify about the requirements of the Environmental Quality Act and the applicable rules for renewal and transfer applications. He will testify about his knowledge, observations, and opinions regarding the three applications and the Department's review and processing of those applications.

In particular, he will testify based upon his education, training, and experience and his review of the three applications, that each application is complete and technically sufficient, that each application was properly processed by the Department, that permit renewal is a successive right, and that each application complies with the Environmental Quality Act and all applicable federal and state laws. He will testify about the mortgage the Department holds on the real property offered as collateral, including that the mortgage was properly recorded in Campbell County so as to be first in time and constitute notice to prospective purchasers. He will testify that he approved the appraiser proposed by the applicant, that the appraisal in place was sufficient to transfer the permit at issue, and he will explain how he accounted for the reasonable expense associated with selling the property. He will explain how the Applicant Violator System works, that checks on these applicants were made at appropriate times, and that the applicants had no outstanding violations which would preclude renewal or transfer when the final decision on each

application was made. He will explain that there is no basis for the Director or the Council to deny a permit transfer to Blackjewel, LLC, under Wyoming Statute § 35-11-406(o). Ultimately, he will testify that the objections raised in these proceedings have no merit, that the Council should affirm his decision to renew Contura Coal West, Inc.'s, permit for the Belle Ayr Mine, and grant the permit transfers requested by Blackjewel, LLC, for the Eagle Butte and Belle Ayr Mines.

Mr. Wendtland may also rebut any opinions or evidence offered by any other party.

The Department reserves the right to call any of the witnesses identified by any other party, or any additional witnesses necessary for foundation, impeachment, or rebuttal.

II. Claims, defenses, and issues

Based on the Amended Objections and Petitions for Hearing, DEQ believes that the factual and legal issues presented for this consolidated hearing should be consolidated and presented to the Council as follows:

1. Was the mortgage on the real property collateral properly recorded?
2. Does the mortgage on the real property collateral provide DEQ with a perfected first lien security interest?
3. Did the administrator approve the appraiser selected by the applicant?
4. Is recertification of a one year old appraisal sufficient for a renewal?
5. Does a proposed permit transferee have to get their own appraisal if they are transferring existing real property collateral?
6. Did the administrator deduct any reasonable expense anticipated by DEQ in selling the real property collateral?

7. Did the final compliance history report show either company was ineligible to receive a permit renewal or transfer?
8. Must the Director or the Council initiate a proceeding under Wyoming Statute § 35-11-406(o)?
9. If such a proceeding can be initiated by an interested party and occur in the midst of a hearing on a renewal or transfer application, is there sufficient evidence to make a finding that Blackjewel has a demonstrated pattern of willful violations resulting in irreparable harm to the environment as to indicate reckless, knowing or intentional conduct?
10. Can the Council deny a permit on the grounds that an interested person was precluded from inspecting a document withheld under an exception to the Wyoming Public Records Act?
11. Can the Council consider whether the real property appraisal is accurate? With regard this issue, the Powder River Basin Resource Council, without designating any competent expert testimony on the subject, asserts that the appraisal is too high. However, before accepting real property as a collateral bond, an appraiser must determine the fair market value of the property. Rules Wyo. Dept. of Env'tl. Quality, Land Quality Division-Coal, Chapter 11, § 3(c)(i)(A). In fact, the rules specifically provide that the fair market value of the property "shall be determined by an appraiser or appraisers proposed by the operator" and selected by the administrator. *Id.* Moreover, for a renewal bond, "The findings of the appraisal shall be final and binding

unless both parties agree to a reappraisal.” *Id.* at § 4(a)(iv). Neither DEQ nor the Council is empowered to revisit the chosen appraiser’s determination, as both are equally bound to follow these rules. Instead, DEQ asserts control over the quality of the appraisal through the selection process, and then DEQ, the applicant, and the Council are bound by the results.

12. If the Council can review the real property appraisal, is there sufficient evidence that the real property appraisal deviates from the actual fair market value of the property such that the Council can order Blackjewel to provide additional surety bonding or other collateral?

III. Burden of Proof

There are three separate actions at issue in these proceedings. The renewal of Contura Coal West’s existing permit for the Belle Ayr Mine issued on October 23, 2018, and the proposed permit transfers of the permits for the Belle Ayr Mine and the Eagle Butte Mine from Contura Coal West to Blackjewel, LLC. Under Wyoming Statute § 35-11-406(m) and (n), BlackJewel bears the burden of proving the permit transfers should be granted. Conversely, because Contura Coal West’s permit renewal was approved by DEQ, and the Powder River Basin Resource Council is appealing that decision, the burden of proving arbitrary or unlawful administrative action falls on the complainant. *Knight v. Envtl. Quality Council*, 805 P.2d 268, 273 (Wyo. 1991).

IV. Statement of stipulated facts

Currently, the parties have not entered into any stipulations of fact. DEQ believes that it would be helpful in these proceedings for the parties to stipulate that except for the

deficiencies alleged in the Amended Objections and Petitions for Hearing the permit renewal and transfer applications otherwise comply with all applicable requirements. Such a stipulation would eliminate the need for the applicants to present evidence demonstrating compliance with all requirements applicable to permit renewals and transfers, and there are many.

V. Exhibits

DEQ intends to offer the following exhibits at the hearing of this matter which have been concurrently filed electronically with the Council and are attached to the copies provided to the parties and the Hearing Examiner:

DEQ01 – Permit file for the Coal Permit Renewal Application filed by Contura Coal West, Inc., for renewal of the Belle Ayr Mine Permit

DEQ02 – Permit file for the Application for Permit Transfer of the Belle Ayr Mine Permit

DEQ03 – Permit file for the Application for Permit Transfer of the Eagle Butte Mine Permit

DEQ04 – Mortgage dated August 4, 2016

DEQ05 – Emails dated May 1 and 2, 2017, between Mr. Thrall, Mr. Wendtland and Ms. Wichmann re Mr. Brockman

DEQ06 – Emails dated May 1 and 2, 2017, between Mr. Thrall and Mr. Wendtland re approval of Mr. Brockman as the appraiser

DEQ07 – 2018 Belle Ayr Mine Annual Report Bond

DEQ08 – AVS Office User Assistance Liasons published by the Office of Surface Mining Reclamation and Enforcement

DEQ09 – Letter to Mr. Thrall from Mr. Wendtland dated January 16, 2018

DEQ10 – Letter from Mr. Thrall to Mr. Wendtland dated January 18, 2018

DEQ11 – Compliance history report for Blackjewel LLC dated October 4, 2018

DEQ12 – Letter from Mr. Rogaczewski to Mr. Thrall dated October 5, 2018 re notice of technical completeness of Eagle Butte Mine transfer application

DEQ13 – Letter from Mr. Rogaczewski to Mr. Thrall dated October 5, 2018 re notice of technical completeness of Belle Ayr Mine transfer application

DEQ14 – Map of the mine and ranch properties


DEQ, with the consent of the other parties, previously uploaded the permit files related to this matter onto the Council’s electronic filing system--DEQ01 through DEQ03.

DEQ reserves the right to enlarge any exhibit for demonstrative purposes at the hearing. DEQ also reserves the right to use at the hearing any exhibits designated by any other party. DEQ further reserves the right to designate additional exhibits as may become necessary for impeachment or rebuttal.

VI. Estimated time required for the hearing

DEQ believes that it will take approximately two hours for the agency to put on its case in chief. DEQ would anticipate that the cases in chief of the other parties would be of similar duration or shorter. Accordingly, DEQ believes this hearing should last no more than one and a half days.

DATED this 7th day of May, 2019.


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CERTIFICATE OF SERVICE

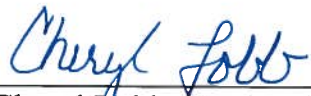
I hereby certify that I served a true and correct copy of the foregoing upon the persons below via e-mail and by depositing the same in the United States mail, first-class postage prepaid, this 7th day of May 2019, addressed as follows:

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