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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 PRE-HEARING DISCLOSURE
STATEMENT**

The Powder River Basin Resource Council (“Resource Council”) hereby supplies its pre-hearing disclosure statement for the hearing to be held May 15-16, 2019 in the above-captioned proceedings.

WITNESSES

The following witnesses will be called by the Resource Council at the hearing:

1) **Vanessa Romero**: Ms. Romero is a Records and Data Management Specialist at the Wyoming Department of Environmental Quality (“DEQ”). Ms. Romero conducted at least one of the Applicant Violation System (“AVS”) “checks” that are at issue in this proceeding. If not called by the DEQ or another party, the Resource Council will call Ms. Romero to testify to the DEQ process for AVS checks and what resulted from the check(s) she conducted.

2) **Mark Rogaczewski**: Mr. Rogaczewski is the District 3 Supervisor for the DEQ's Land Quality Division ("LQD"). Mr. Rogaczewski oversees permitting activities for coal mining in District 3, which includes permitting activities for the Eagle Butte and Belle Ayr Mines at issue in these proceedings. Mr. Rogaczewski also oversaw and/or supervised at least one AVS check related to the permit transfer application. If not called by DEQ or another party, the Resource Council plans to call Mr. Rogaczewski to testify to his knowledge about the permit renewal and permit transfer processes, including how and when the AVS and other compliance checks were conducted.

3) **Casey Robb**: Mr. Robb is the LQD Bonding Analyst for the DEQ. Mr. Robb was heavily involved in the regulatory process to approve the proposed reclamation bond instruments for the permit transferee, Blackjewel, as well as the permit renewal applicant, Contura. If not called by the DEQ or another party, the Resource Council will call Mr. Robb to testify to the bond review process for the permit renewal and permit transfer applications at issue in this proceeding, with a focus on the DEQ's approval of a real property collateral bond to guarantee reclamation at the Belle Ayr Mine.

The Resource Council may call the following witness at the hearing:

1) **Mark Thrall**: Mr. Thrall is the Senior Environmental Manager of Environmental departments of the Eagle Butte and Belle Ayr Mines. He is responsible for environmental compliance, permitting, and reporting. If not called by Blackjewel or another party, the Resource Council may call Mr. Thrall to testify to his role in preparing the applications for permit transfer and to testify to his personal knowledge about the compliance status of his employer and any knowledge of the facts and information contained in a letter he sent to the DEQ dated January

18, 2018 (the letter will be included in the Resource Council's production of exhibits to be filed in this proceeding).

The Resource Council reserves the right to call any witness designated by another party or additional witnesses necessary for impeachment, foundation, and rebuttal purposes.

STATEMENT OF CLAIMS AND ISSUES OF FACT AND LAW

The evidence presented at the hearing will demonstrate three main issues of fact and law:

(1) The portion of the reclamation bond for the Belle Ayr Mine collateralized with real property does not meet legal standards either to renew the permit or to transfer the permit to Blackjewel;

(2) Companies associated with the owners and controllers of Blackjewel have outstanding environmental and safety violations, including serious mine cessation orders, that were not disclosed in the applications to transfer the permits, in violation of the legal standards established for permit transfers; and

(3) These outstanding environmental and safety violations prevent Blackjewel from obtaining a coal mine permit in Wyoming.

BURDEN OF PROOF

The Wyoming Environmental Quality Act ("WEQA") dictates that "[t]he applicant for a surface coal mining permit has the burden of establishing that his application is in compliance with this act and all applicable state laws." *Wyo. Stat. § 35-11-406(n)*. This requirement equally applies to permit renewals and permit transfers. This burden applies to these proceedings because these proceedings are being held pursuant to sections 406(k) and 406(p) of the WEQA, to discuss and settle issues raised by objections to applications related to coal mine permits. As laid out in the petitions for hearing, the procedural rules and statutes governing new coal mine permit

applications equally apply to applications to renew a permit or to applications to transfer a coal mine permit.¹

STIPULATED FACTS

The parties have not stipulated to any facts.

EXHIBITS

Please see the Resource Council's designation of exhibits filed in these proceedings. The Resource Council reserves the right to designate additional exhibits needed for rebuttal, impeachment, or demonstrative purposes at the hearing.

APPROXIMATE TIME REQUIRED AT THE HEARING

The Resource Council anticipates it will need 2-3 hours for cross-examination of other party witnesses and 2-4 hours to call the three witnesses named above.

Respectfully submitted this 8th day of May, 2019.

/s/ Shannon Anderson
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¹ Wyoming law follows controlling federal law under the Surface Mine Control & Reclamation Act in this regard.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of May, 2019, the foregoing **PRE-HEARING DISCLOSURE STATEMENT** was mailed to:

Bernard Haggerty, Hearing Examiner
State of Wyoming
Office of Administrative Hearings
2020 Carey Ave., 5th Floor
Cheyenne, WY 82002

And was served on the following parties via electronic mail and the EQC online docket system:

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