

**FILED**

**MAY 14 2019**

*Jim Ruby, Executive Secretary  
Environmental Quality Council*

STATE OF WYOMING

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

UPON REFERRAL FROM THE ENVIRONMENTAL QUALITY COUNCIL

IN THE MATTER OF PERMIT RENEWAL	)	OAH DOCKET NO. 19-004-220
APPLICATION OF	)	C103
CONTURA COAL WEST, LLC.: P20214;	)	DOCKET NO. DEQ/EQC 18-4803
AND IN THE MATTER OF THE	)	
APPLICATIONS FOR COAL MINE PERMIT	)	
TRANSFERS OF	)	
BLACKJEWEL, LLC.: PT0214 & PT0428;	)	DOCKET NO. DEQ/EQC 18-4805

**ORDER FROM PREHEARING CONFERENCE**

This contested case proceeding concerns two existing coal mines, the Belle Ayr and the Eagle Butte Mines. The Department of Environmental Quality (DEQ) renewed the permit held by Contura Coal West, LLC (Contura) to operate the Belle Ayr Mine, and Contura proposes to transfer the permits for both the Belle Ayr and Eagle Butte Mines to Blackjewel, LLC (Blackjewel). The Powder River Basin Resource Council (Powder River) filed a Petition, and later an Amended Petition, objecting and requesting a hearing.

The Environmental Quality Council (Council) referred this case to the Office of Administrative Hearings (Office) to preside at a contested case hearing before the Council pursuant to Wyoming Statute § 9-2-2202(b); the Wyoming Administrative Procedure Act, Wyoming Statute §§ 16-3-101 through -115; the Department of Environmental Quality, Rules of Practice and Procedure, Chapter 2, 020.0008.2.04242017 (Council Hearing Rules); and, the Office of Administrative Hearings, General Agency Rules, Chapter 2, 270.0001.2.07202017 (OAH Hearing Rules).

Pursuant to the Council Hearing Rules, Chapter 2, Section 12, a prehearing conference was held on May 9, 2019, in Cheyenne, Wyoming. Meghan Lally, Council Chair, and Shane

True, Council Member, appeared by telephone, and the Council staff appeared in person. In addition, the parties and representatives appearing in person or by telephone included:

- a. Ryan Schelhaas, Chief Deputy Attorney General, Advising Attorney for the Council
- b. James Kaste, Senior Assistant Attorney General, Attorney for DEQ
- c. Isaac Sutphin and Jeffrey Pope, Attorneys for Contura (Contura's General Counsel also appeared)
- d. Eric Frye, Attorney for Blackjewel (Jason Wasserburger was allowed to withdraw as counsel for Blackjewel at the start of the prehearing conference)
- e. Shannon Anderson, Attorney for Powder River Basin Resource Council (Powder River)

**Issues:** The issues to be decided by the Council are whether (a) Contura's permit to operate the Belle Ayr Mine should be renewed and (b) Contura's permits for both the Belle Ayr and Eagle Butte Mines should be transferred to Blackjewel.

**Burden of Proof:** "The general rule in administrative law is that, unless a statute otherwise assigns the burden of proof, the proponent of an order has the burden of proof[.]" *JM v. Dep't of Family Servs.*, 922 P.2d 219, 221 (Wyo. 1996) (citation omitted). Here, the Wyoming Environmental Quality Act, Wyoming Statute § 35-11-406(m) and (n), assigns the burden of proof to Contura and Blackjewel.

**Stipulations:** The parties stipulated that Powder River's right to inspect documents withheld under an exception to the Wyoming Public Records Act is no longer an issue in this case.

**Order of Procedure:** The parties agreed that, in general, the presentation of evidence and arguments at the hearing will proceed in the following order: DEQ-Powder River-Contura-Blackjewel.

**Exhibits:** The following exhibits have been admitted into evidence without objection and will be published to the Council Members before the scheduled hearing:

- a. DEQ: Exhibits 1 through 15
- b. Powder River: Exhibits 1, 2, 4, 5, and 10 (Powder River withdrew Exhibit 6)
- c. Contura: Exhibits 1 through 9 (Contura's Exhibits 1 and 2 are "Confidential" and are subject to a protective order prohibiting their disclosure)
- d. Blackjewel: Exhibit 1

The admissibility of Powder River's Exhibits 3, 7 through 9, and 11 through 17 will be addressed at the hearing.

**Witnesses:** Witnesses listed by multiple parties may be questioned in whatever sequence best avoids unnecessary repetition.

**Motions:** The following pre-hearing motions were heard at the prehearing conference:

1. The motion to substitute Eric Frye as attorney for Blackjewel was granted without objection.

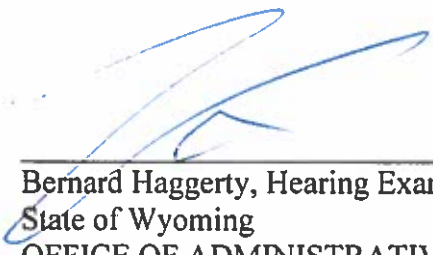
2. Powder River's motion to amend its Petition and to file the Amended Petition was granted without objection.

3. A ruling on Contura's motion in limine to exclude expert testimony about appraisals and land values was reserved for the hearing, although Powder River indicated it does not intend to present such expert testimony.

4. A ruling on Contura's motion in limine to exclude testimony and evidence about alleged willful violations of environmental laws was also reserved for the hearing. In general this motion pertains to Power River's proposed Exhibits 7 through 9 and 11 through 17 and will be addressed as needed in the course of the hearing.

**Other:** This Prehearing Conference Order shall control the course of the hearing and will be modified only to prevent manifest injustice.

DONE this 10 day of May, 2019.



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Bernard Haggerty, Hearing Examiner  
State of Wyoming  
OFFICE OF ADMINISTRATIVE HEARING  
Cheyenne, Wyoming 82002-0270  
(307) 777-6660

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document was served by mailing a true and correct copy, postage prepaid, on the 1<sup>st</sup> day of May, 2019, addressed to the following:

Wyoming Department of Environmental Quality Council - (ORIGINAL)  
Attn: Joe Girardin  
2300 Capitol Avenue  
Hathaway Building, Room 136  
Cheyenne, Wyoming 82002

James Kaste – Attorney for Environmental Quality Council  
Sr. Assistant Attorney General  
2320 Capitol Avenue  
Cheyenne, Wyoming 82002

Eric T. Frye – Attorney for Blackjewel, LLC  
1051 Main Street  
Milton, West Virginia, 25541

Ryan Schelhaas – Advising Attorney for Environmental Quality Council  
Chief Deputy Attorney General  
2320 Capitol Avenue  
Cheyenne, Wyoming 82002

Shannon Anderson – Attorney for Powder River Basin Resource  
934 Main Street  
Sheridan, Wyoming 82801

Jeff Pope – Attorneys for Contura Coal West, LLC.  
2515 Warren Avenue, Suite 450  
Cheyenne, Wyoming 82001

  
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Office of Administrative Hearings