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STATE OF WYOMING

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

UPON REFERRAL FROM THE WYOMING DEPARTMENT OF ENVIRONMENTAL
QUALITY

IN THE MATTER OF PERMIT RENEWAL)	OAH DOCKET NO. 19-004-220
APPLICATION OF)	CI03
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

CONTURA COAL WEST’S BRIEF ON APPLICABILITY OF AUTOMATIC STAY

INTRODUCTION

On Monday July 1, 2019, Blackjewel LLC filed for Chapter 11 bankruptcy protection in the Bankruptcy Court for the Southern District of West Virginia. As a result, the Council requested the parties brief “whether the Council can move forward with their decision in this matter or if the matter is stayed pending the outcome of the bankruptcy filing by Blackjewel.” The simple answer is the Council may move forward. As explained below, the automatic stay provision of the bankruptcy code does not apply to this proceeding. With that said, Contura Coal West LLC (Contura) understands the Council faces some uncertainty. So Contura has no

objection to the Council using its inherent authority as the hearing body to stay the case pending additional action in the bankruptcy.

1. The automatic stay does not apply.

Pursuant to Section 362(a) of the Bankruptcy Code, a Debtors' filing of the voluntary petitions operates as a stay, applicable to all entities, of, among other things: (a) the commencement or continuation of a judicial, administrative, or other action or proceeding *against the Debtor* (i) that was or could have been commenced before the commencement of the Debtor's cases or (ii) to recover a claim against the Debtor that arose before the commencement of the Debtor's petition; (b) the enforcement, against the Debtor or against any property of the Debtor's bankruptcy estates, of a judgment obtained before the commencement of the Debtor's cases; or (c) any act to obtain possession of property of or from the Debtor's bankruptcy estates, or to exercise control over property of the Debtor's bankruptcy estates. 11 U.S.C. § 362(a) (emphasis added).

The key to whether this section applies here is the phrase "against the debtor," which is Blackjewel. This hearing is not against Blackjewel. Rather, Blackjewel initiated the permit transfer process by filing an application with the Department of Environmental Quality (DEQ). To be sure, the Powder River Basin Resource Council (PRBRC) objected to the transfer and requested a hearing before the Council. But the PRBRC could not have objected unless Blackjewel applied for a permit transfer. So even this contested case remains part of a process that Blackjewel began to acquire a permit. The PRBRC did not initiate a separate action against Blackjewel to obtain a judgment or property. The hearing will simply decide if Blackjewel's permit transfer application can proceed to the next step of the statutory process. No matter the Council's decision on PRBRC's objections, the case will not result in a judgment or seizure of

property from Blackjewel. Therefore, the case is not against the debtor as the bankruptcy code requires for the automatic stay to apply.¹

In similar permitting cases before the United States Interior Board of Land Appeals (IBLA), the IBLA has analyzed the stay in the same manner. The Board's precedent recognizes that "[t]he statute makes clear that the automatic stay applies, *inter alia*, to the commencement or continuation of an administrative 'action or proceeding' against the debtor that was or could have been commenced before the commencement of the bankruptcy case." *Agronics Inc.*, 143 IBLA 301, 303 (1998) (citing 11 U.S.C. § 362 (1994)). "Whether a proceeding is against the debtor is determined by examining the debtor's status at the time the proceedings were initiated, rather than by reference to which party has appealed." *Lone Star Steel Co.*, 124 IBLA 144, 146 (1992). At the time this contested case began, Blackjewel had affirmatively requested a permit; PRBRC had not affirmatively asked DEQ to block them from acquiring one. Therefore, the automatic stay does not apply to this proceeding.

The Council also must consider the impact of Section 525 of the Bankruptcy Code. *See* 11 U.S.C. § 525. Subject to some exceptions, all foreign and domestic governmental units are prohibited and enjoined from: (a) denying, revoking, suspending or refusing to renew any permit, license, charter, franchise or other similar grant to the Debtor; (b) placing conditions upon such a grant to the Debtor; or (c) discriminating against the Debtor with respect to such a grant, solely because the Debtor is a debtor under the Bankruptcy Code, may have been insolvent before the commencement of the Bankruptcy Cases, are insolvent during the pendency of these Chapter 11 cases, are insolvent during these cases but before the Debtors are granted or denied a discharge or have not paid a debt that is dischargeable in the Bankruptcy Cases. 11 U.S.C. § 525. In short,

¹ In its brief, PRBRC does not analyze the key phrase "against the debtor." Its discussion of exceptions is irrelevant when the basic provision of the stay does not apply.

Blackjewel's bankruptcy does not allow the Council to refuse to act or consider the evidence before it.

2. The Council, however, can stay the case.

Contura acknowledges that recent events may give the Council pause about moving forward. Likewise, Contura understands if the Council is uncertain about the automatic stay. But the solution is not to apply the automatic stay because that runs contrary to the law. Rather, the Council has the authority to direct the manner of the proceedings, including staying further proceedings. *See* Wyo. Stat. Ann. § 16-3-112(b); WY Rules and Regulations 020.0008.2 § 21. To the extent the Council wishes to invoke this authority to stay the case, Contura does not object.

Should the Council decide to use its authority to stay the case, Contura requests the Council hold monthly status conferences with the parties. That will ensure the parties can keep the Council informed of the events in the bankruptcy and elsewhere that may change the need to stay the proceedings.

3. No matter if the stay applies or not, the bankruptcy has no effect on the Council's decision in this case.

In its briefing on the automatic stay, PRBRC argues that the Council now needs to consider issues about Blackjewel that it did not present during the hearing. (*See* PRBRC Brief at 5.) Contura anticipated PRBRC may attempt to interject new issues into a hearing where the Council has **closed** the evidentiary portion of the hearing. (*See* Contura Response to PRBRC's Proposed Findings of Fact at 5-6.) For the reasons Contura articulated in its previous briefing, the Council should again reject this approach. Blackjewel's bankruptcy may raise questions but those questions are for the enforcing agency, DEQ, to address later in this process and moving forward. It would be prejudicial and reversible error for the Council to consider recent events in

deciding PRBRC's objections that had nothing to do with current events. It would also violate Section 525 of the Bankruptcy Code as discussed above.

CONCLUSION

The Council has all the evidence and briefing it needs to decide PRBRC's two objections to Blackjewel's permit transfer applications. The automatic stay from Blackjewel's bankruptcy does not prevent that decision, but should the Council wish to exercise its own authority, it can stay the proceedings.

DATED: July 5, 2019

/s/ Jeffrey S. Pope

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CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2019, I served the foregoing by electronic mail properly addressed to the following:

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