

Patrick Crank

From: Patrick Crank
Sent: Friday, October 2, 2020 4:13 PM
To: 'Shannon Anderson'; Matt VanWormer
Cc: Jim Seward; Abbigail Forwood; Vici Woodward
Subject: RE: Expert designation

Shannon:

Thanks for your response. We accept your clarification. We will rely on the fact that Dr. Marino will not offer any opinions as to conditions 9 and 10 of the permit and the adequacy of the subsidence plan other than the opinions that he has previously expressed in written reports and during the informal conference.

Thanks
Pat

From: Shannon Anderson <sanderson@powderriverbasin.org>
Sent: Friday, October 2, 2020 3:42 PM
To: Matt VanWormer <matt.vanwormer@wyo.gov>
Cc: Patrick Crank <pat@cranklegalgroup.com>; Jim Seward <jim@cranklegalgroup.com>; Abbigail Forwood <abbi@cranklegalgroup.com>; Vici Woodward <vici@cranklegalgroup.com>
Subject: RE: Expert designation

Thanks, Matt – that helps to clarify the concern. We see our objection to condition 10 as a legal issue. Regarding condition 9, I do not anticipate Dr. Marino testifying about what is being required as again the issue for us is the timing and whether it should have been required prior to permit issuance. You probably have noted that our Petition for Hearing did not include any specific objections to the technical contents of condition 9. Additionally, since the core hole sampling and analysis is required post-permit and it has not yet been submitted to DEQ, there is nothing for Dr. Marino to review and opine about at this time. Hope that helps, and please let me know if further clarification is needed. Thanks, Shannon

From: Matt VanWormer [mailto:matt.vanwormer@wyo.gov]
Sent: Friday, October 2, 2020 2:53 PM
To: Shannon Anderson <sanderson@powderriverbasin.org>
Cc: Patrick Crank <pat@cranklegalgroup.com>; Jim Seward <jim@cranklegalgroup.com>; Abbigail Forwood <abbi@cranklegalgroup.com>; Vici Woodward <vici@cranklegalgroup.com>
Subject: Re: Expert designation

Shannon -

I share Pat's concern about the expert designation. I don't see a problem with generally referencing the opinions expressed in Dr. Marino's report. However, because of the report's timing, it sheds no light on Dr. Marino's opinions regarding Conditions 9 and 10 of Brook's permit. Do you expect Dr. Marino to offer opinions regarding these conditions?

Thanks,
Matt

On Fri, Oct 2, 2020 at 1:54 PM Shannon Anderson <sanderson@powderriverbasin.org> wrote:

Pat: Dr. Marino's report lays out in detail the opinions he will offer in testimony. He spoke at the informal conference to these opinions and findings and his testimony at the hearing will be consistent with what is already available on the record. If you would like me to recite a list of those opinions within the designation filing itself, I can do that, but in past experience in EQC proceedings a more general description referring to the expert report has been sufficient (see attached previous filings, which garnered no objections). My filing is consistent with my past experience and practice before the EQC. Thanks, Shannon

From: Patrick Crank [mailto:pat@cranklegalgroup.com]

Sent: Friday, October 2, 2020 1:27 PM

To: Shannon Anderson <sanderson@powderriverbasin.org>; Jim Seward <jim@cranklegalgroup.com>; Abbigail Forwood <abbi@cranklegalgroup.com>; Vici Woodward <vici@cranklegalgroup.com>; Matt VanWormer <matt.vanwormer@wyo.gov>

Subject: Expert designation

Shannon:

The expert designation you filed this week is woefully deficient. Pursuant to Rule 26, WRCP, an expert designation must at a bare minimum disclose all opinions that an expert will offer. Your statement that:

“At the hearing, Dr. Marino plans to present the opinions discussed in the report and other opinions related to subsidence he has drawn from reviewing the permit application. If necessary, he will also provide responses to any expert reports and information provided by Brook and DEQ related to subsidence.”

is fatally deficient under Rule 26.

We are writing to give you a chance to disclose what opinions Mr. Marino will offer rather than just informing us that he will offer some opinion. If you plan to comply with the rule, please advise us today. I will hold off filing an objection with the EQC asking you to follow one of the most basic rules of the WRCP until you share your plans with me today.

How would you like to handle this?

Pat

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Matt VanWormer

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Wyoming Attorney General's Office
Water and Natural Resources Division
307-777-6199

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