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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In re Brook Mining Co., LLC coal mine)
Permit – PT0841) EQC Docket No. 20-4802
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)

**RULE 56.1 STATEMENT IN SUPPORT OF BRIEF IN SUPPORT OF RESPONDENT
BROOK MINING, LLC, MOTION FOR SUMMARY JUDGMENT FOR LACK OF
STANDING**

COMES NOW, Brook Mining Co., LLC, (Brook) by and through its attorneys Patrick J. Crank, Abbigail C. Forwood, and Jim D. Seward of the firm Crank Legal Group, P.C., and files its *Rule 56.1 Statement in Support of Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing*. Brook hereby asserts that there are no genuine issues to be tried with regard to the following material facts:

1. The Petition makes only two factual allegations as to standing. All those allegations are contained in paragraphs five and six of the Petition which provide:

5. The Resource Council and its members timely filed objections to Brook’s Coal mine permit application and participated in the informal conference held on May 13, 2020. Resource Council members John Buyok, Gillian Malone, Anton Bocek, Joan Tellez, Joanne Westbrook,

and William Bensel filed objections and participated in the informal conference.

6. The objections and concerns of the Resource Council members demonstrate that the Resource Council, through representation of its members, is an “interested person” within the meaning of the Wyoming Environmental Quality Act (“WEQA” or “Act”) section 406(p) and a “person with an interest which is or may be adversely affected” within the meaning of Ch.1 § 17(b) of DEQ’s Rules of Practice and Procedure. The Resource Council’s objections are attached as Appendix A to this petition for hearing and the comments of individual Resource Council members are available on the DEQ’s website.

Petition at p. 2.

2. The PRBRC fails to specifically allege anywhere in the Petition how the individuals named in Paragraph five of the petition have been specifically and individually harmed by the issuance of the Permit by the WDEQ in this matter. *See*, Petition.

3. The PRBRC fails to specifically allege anywhere in the Petition how the PRBRC itself, as a corporate entity, has been specifically and individually harmed by the issuance of the Permit by the WDEQ in this matter. *See*, Petition.

4. Other than a conclusory statement in the Petition that the six individuals named in the Petition are members, there is no evidence in the Petition, the tax returns filed by the PRBRC with the IRS, or in the extensive record of this matter including the individuals written comments and testimony at the informal conference, that the six individuals are members of the PRBRC. *See*, Appendix A attached to the Petition; public comments of individual Resource Council Members available on the DEQ’s website <http://deq.wyoming.gov/lqd/news/deq-approves-brook-mine-company-coal-permit>; Transcript of May 13, 2020 Informal Conference, attached as Exhibit F to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of

Standing; Affidavit of Jeff Barron attached as Exhibit E to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing.

5. The written comments and testimony at the informal conference of six individuals named in the Petition fail to establish the type of individual harm and injury flowing from the issuance of the Permit that is necessary to establish standing under Wyoming law. *See*, Transcript of May 13, 2020 Informal Conference, attached as Exhibit F to the Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing; public comments of individual Resource Council Members available on the DEQ's website <http://deq.wyoming.gov/lqd/news/deq-approves-brook-mine-company-coal-permit>,

6. None of these individuals filed a challenge to the Permit and are not parties to this action. *See*, Petition; Powder River Basin Resource Council's Response to Brook Mining Co., LLC's First Request for Production of Documents, attached as Exhibit B to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing, at p.8; Preliminary Designation of Witnesses and Exhibits filed on August 31, 2020.

7. There are only three parties to this Appeal; the PRBRC, Brook, and the WDEQ. *See*, Petition.

8. The PRBRC has not alleged in the Petition any damage or injury to the PRBRC itself by issuance of the Permit. *See*, Petition.

9. The PRBRC failed to factually allege injury to itself and cannot establish standing based on an injury to its members even if the six named individuals are members of the PRBRC. *See*, Petition; Preliminary Designation of Witnesses and Exhibits filed on August 31, 2020.

10. In the Preliminary Designation of Witnesses and Exhibits filed by the PRBRC on August 31, 2020, the PRBRC does not list the six individuals named in the Petition as witnesses at the EQC hearing scheduled in January 2021. *See*, Preliminary Designation of Witnesses and Exhibits filed on August 31, 2020.

11. The PRBRC cannot allege that injury to any alleged member of the PRBRC may give rise to standing to the PRBRC itself where the individuals identified in the Petition will not testify at the EQC hearing and are not parties to the appeal filed in this matter. *See*, Preliminary Designation of Witnesses and Exhibits filed on August 31, 2020; public comments of individual Resource Council Members available on the DEQ's website <http://deq.wyoming.gov/lqd/news/deq-approves-brook-mine-company-coal-permit>; Transcript of May 13, 2020 Informal Conference, attached as Exhibit F to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing; Powder River Basin Resource Council's Response to Brook Mining Co., LLC's First Request for Production of Documents, attached as Exhibit B to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing at p.8.

12. The issues raised by the PRBRC in the Petition are dramatically different and mostly inconsistent with the concerns raised by six individuals named in the Petition. *See*, public comments of individual Resource Council Members available on the DEQ's website <http://deq.wyoming.gov/lqd/news/deq-approves-brook-mine-company-coal-permit>; Petition; Transcript of May 13, 2020 Informal Conference, attached as Exhibit F to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing; .

13. The PRBRC is not factually challenging the subsidence plan required by Permit and conditions 9-11 of the Permit. *See*, email chain of October 2, 2020, between

Shannon Anderson, Brook, and Wyoming Attorney General's Office attached as Exhibit G to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing.

14. Pursuant to Rules of the EQC and the Wyoming Administrative Procedures Act ("WAPA") failure to seek review of any decision in a timely manner is jurisdictional. *Chevron U.S.A. Inc. v. Dept. of Revenue*, 2007 WY 62 (Wyo. 2007) ¶ 7. ("The filing of a timely properly authorized petition for review of administrative action is mandatory and jurisdictional"). Because the six individuals failed to seek review of the permitting decision, they are barred from doing so now.

15. The PRBRC refused to produce any documents that detail and account for any and all membership fees, dues, or contributions to the PRBRC. The PRBRC produced only three years of 990 IRS tax returns and did not produce all accompanying schedules and attachments for the IRS 990 tax returns. *See*, Powder River Basin Resource Council's Response to Brook Mining Co., LLC's First Request for Production of Documents, attached as Exhibit B to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing.

16. The three 990 forms that the PRBRC did produce show that PRBRC received no income from "membership dues" in 2016, 2017, or 2018. *See*, Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing, Exhibit C, 2016 IRS Form 990 for PRBRC, p.9, Statement of Revenue, line 1(b); 2017 IRS Form 990 for PRBRC, p.9, Statement of Revenue, line 1(b); and 2018 IRS Form 990 for PRBRC, p.9, Statement of Revenue, line 1(b).

17. In 2016, at least 61.2 percent of the PRBRC's grants and donations came from out of state entities. *See*, Affidavit of Jeff Barron attached as Exhibit E to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of

Standing, ¶43. In 2017, at least 58.9 percent of the PRBRC's grants and donations came from out of state entities. *Id.* In 2018, at least 60.6 percent of the PRBRC's grants and donations came from out of state entities. *Id.* The IRS tax returns filed with the United States government show that the PRBRC received no membership dues or fees between 2016 to 2018. *Id.* at ¶8. *See*, Affidavit of Jeff Barron, attached as Exhibit E to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing.

18. If the PRBRC produced a complete accounting of records detailing all monies received by the PRBRC in the form of grants, contributions, and membership dues for the time period 2016 to 2018, it is highly likely that the PRBRC received other greater contributions from out of state entities. *See*, Affidavit of Jeff Barron, attached as Exhibit E to Brief in Support of Respondent Brook Mining, LLC, Motion for Summary Judgment for Lack of Standing at ¶43.

19. The PRBRC is in large part funded by out of state entities based on IRS tax returns does not collect membership dues. *Id.* These facts show that the PRBRC has no standing to pursue the appeal in this matter. *Id.*

Respectfully submitted this 8th day of October, 2020.



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CERTIFICATE OF SERVICE

This is to certify that on the 31st day of October, 2020, a true and correct copy of the foregoing ***BROOK MINING CO. LLC'S MOTION FOR SUMMARY JUDGMENT*** was served upon the following:

Shannon Anderson
Powder River Basin Resource Council
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- U.S. Mail
- Fed Ex
- EQC's electronic docket system
- Hand Delivered

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- Hand Delivered



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