

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

**IN THE MATTER OF THE APPEAL FROM)
SMALL MINE PERMIT NO. TFN 7 1/193) Docket No. 24-4802
DANIEL AND LUCYNA SHEFTER, ET AL.)**

**ORDER SETTING PREHEARING CONFERENCE,
FINAL HEARING, AND REQUIRING DISCLOSURE**

THIS MATTER has been referred to the Environmental Quality Council (Council) to conduct an administrative contested case hearing pursuant to Wyo. Stat. Ann. § 35-11-112(a). The parties appeared for a scheduling conference on December 19, 2024. In consultation with the parties, the hearing examiner hereby issues this Order with the following deadlines:

1. This Order constitutes the notice of administrative contested case hearing. The parties, counsel, and all witnesses shall appear for the final contested case hearing beginning on **April 13, 2026 at 9:00 a.m.**, at the Sublette County Library, Lovatt Room, 155 S. Tyler Ave., Pinedale, WY 82941. The contested case hearing is scheduled for five (5) days. A court reporter will report the hearing.
2. During the scheduling conference, the parties discussed their main issues and contentions. Petitioner Daniel Shefter contended that the permit holder failed to comply with certain permit conditions before moving forward with mining operations. Shefter also alleged that wildlife issues must be addressed including pronghorn migration and eagle/raptor nesting within the vicinity of the mine. Shefter contended that portions of the mining application were inaccurate, including indication that a spring flowing through the mining property is seasonal rather than year-round. Last, Shefter alleged that the proposed mine violates

Sublette County setback rules. Petitioner DFR, LLC contended that the main issue is water quality concerns due to the mining operation's location near streams and springs flowing into larger tributaries, which affect endangered fish species in the lower drainages. Petitioner DFR also raised concerns regarding wildlife in relation to the mine and that there appears to be no setback restrictions. Petitioner Little Jennie Ranch (LJR) did not take part in the scheduling conference. In its initial filing, LJR contends that there is a nesting pair of bald eagles closer than one half mile to the mine's location. DEQ contends that the Land Quality Division (LQD) properly reviewed the application and other materials and that DEQ appropriately issued the permit to Evans Construction Company.

3. The parties disagree on who bears the burden of proof at the contested case hearing. DFR contends that the respondent bears the burden. Respondent contends that the petitioners bear the burden. At this time, the hearing examiner believes that petitioners should bear the burden of proof at the contested case hearing because they are seeking an order from the Council to revoke the permit. However, the parties may brief this issue in their prehearing disclosure statements and the hearing examiner will make a final ruling at that time.
4. A prehearing conference will be held on **March 30, 2026 at 10:00 a.m.** by videoconference. Invitations to this call will be sent to all parties by Council staff. The purpose of the prehearing conference is to address all pending motions, challenges to admissibility of exhibits or the testimony of witnesses, and all other matters raised by the parties. The Council will record the prehearing conference.
5. In accordance with DEQ Practice and Procedure Rules, Chapter 2, Section 18, on or before **March 16, 2026**, each party shall file and serve upon all other parties and this Council a Prehearing Disclosure Statement setting forth:

- a. A complete list of all witnesses (lay and expert) who will or may testify, together with information on how each witness may be contacted and a brief description of the testimony the witness is expected to give in the case. If a deposition is to be offered into evidence, the original shall be filed with the Council;
- b. A statement of the specific claims, defenses, and issues which the party asserts are before the Council, based on the party's initial filing;
- c. A statement of the burden of proof to be assigned in the contested case with reference to specific regulatory, statutory, constitutional, or other authority established by relevant case law;
- d. A statement of stipulated facts. If the parties are unable to stipulate to facts, the parties shall indicate what efforts have been made to stipulate to facts and the reasons facts cannot be stipulated; and
- e. A complete list of all documents, statements, etc., which the party will or may introduce into evidence. Petitioner Shefter's exhibits shall be identified by as "Shefter" with letters beginning with "A" and going through "Z" (example Shefter-A). Petitioner DFR's exhibits shall be identified as "DFR" with letters beginning with "A" and going through "Z" (example DFR-A). Petitioner LJR's exhibits shall be identified as "LJR" with letters beginning with "A" and going through "Z" (example LJR-A). If necessary, additional exhibits shall begin with "AA" and continue alphabetically. DEQ's exhibits shall be identified by numbers beginning with "1."
- f. You must also file all of your proposed exhibits on the Council's electronic docket system. When filing exhibits on the Council's electronic docket system, identify

them as Final Exhibits and not Pleading Exhibits. The parties shall be prepared to address their exhibits at the above-scheduled prehearing conference.

- g. **In addition to the electronic filing, the parties shall provide the Council with the original and eight (8) identical physical copies of the Prehearing Disclosure Statement and exhibits.** The Prehearing Disclosure Statement and exhibits shall be bound in a spiral or ring binder (that holds 8.5 by 11 inch paper). Each exhibit shall be tabbed, and each page shall be numbered so that every page presented to the Council can be specifically identified. Exhibits containing multiple pages must be individually numbered. The parties shall include a separate index list of all exhibits, which identifies each exhibit and corresponding page number. The physical copies must be provided to the Council prior to the start of the contested case hearing.
6. The information provided in the Prehearing Disclosure Statement shall be binding on each party throughout the course of the contested case unless modified for good cause.
 7. Additional witnesses or exhibits may be added only if the need to do so was not reasonably foreseeable at the time of filing the Prehearing Disclosure Statement, it would not unfairly prejudice other parties, and good cause is shown.
 8. Failure to file a Prehearing Disclosure Statement may result in the hearing examiner striking witnesses, exhibits, claims and defenses, or dismissing the contested case.
 9. All discovery must be completed on or before **March 9, 2026**. Requests for written discovery must be served upon the opposing party at least thirty (30) calendar days prior to this discovery cutoff date of March 9, 2026. The taking of depositions and discovery shall be conducted in accordance with Wyo. Stat. Ann. § 16-3-107(g). All depositions must be completed by the discovery cut-off date. The parties have a continuing duty to

disclose information and material as it becomes known, even after the deadlines set herein, pursuant to W.R.C.P. 26(e). Parties shall not file discovery requests, answers, and deposition notices with the Council.

10. In addition to listing all witnesses as part of the Prehearing Disclosure Statement, each party must also serve upon the other parties a list identifying all expert and lay witnesses. The deadline for petitioners is **December 22, 2025**. The deadline for respondent is **January 19, 2026**. All expert witness designations must comply with Wyo. R. Civ. P. 26(a)(2)(B)-(C).
11. All prehearing motions, including motions for continuance and dispositive motions, shall be filed and served upon all other parties and this Council on or before **February 2, 2026**.
12. A hearing will be held on **March 2, 2026 at 10:00 a.m.** by videoconference to address any outstanding dispositive motions. Invitations to this hearing will be sent to all parties by Council staff. The Council will record this hearing.
13. All original documents and copies filed in this proceeding must be mailed to the Office of the Environmental Quality Council, attention of Joe Girardin, Business Office Coordinator.
14. The parties shall make appropriate arrangements for the attendance of their witnesses at the contested case hearing. Parties or their witnesses may be allowed to participate in the contested case hearing by videoconference if attendance in person is not feasible and attendance by videoconference is approved by the hearing examiner.
15. All parties are encouraged to continue to make reasonable efforts to resolve the case throughout the duration of this matter. The parties shall promptly notify the hearing examiner of all settlements, stipulations, agency orders, or other action eliminating the need for a contested case hearing.

16. If any party, attorney, or witness requires special accommodations, this Council shall be notified as soon as possible so the necessary arrangements may be made.

ORDERED this 11th day of February, 2025.

Marjorie Bedessem
Marjorie Bedessem (Feb 11, 2025 14:26 MST)
Marjorie Bedessem, Hearing Examiner
Environmental Quality Council