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FILED

Nov 30, 2009

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Sierra Club's Attorneys

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

IN THE MATTER OF:) Docket No. 09-2801
MEDICINE BOW FUEL & POWER,)
LLC AIR PERMIT CT-5873)

**SIERRA CLUB'S
MOTION TO STRIKE**

Sierra Club moves to strike: 1) the Report of Katrina Winborn, P.E. (Report), incorporated and submitted by Medicine Bow Fuel & Power, LLC (Medicine Bow) as Exhibit 1 with the Affidavit of Katrina Winborn in Support of Motion for Summary

Judgment, submitted November 16, 2009 (Affidavit); 2) all sentences of ¶ 11 of the Affidavit but the first; 3) the second sentence of ¶ 9 of the Affidavit, and (4) those portions of Medicine Bow's memorandum of law that refer to the Report, *see, e.g.*, pp. 14, 17, 21, 23-26, 28-29. These materials introduce information not present in the record at the time of decision and constitute post-hoc rationalizations EQC may not consider in its review of this matter. Additionally, the Report is inadmissible under the Wyoming Rules of Evidence and therefore not to be considered in a motion for summary judgment.

Counsel for DEQ and Medicine Bow have been consulted and have indicated that their clients oppose this motion.

Dated this 30th day of November, 2009.

/s/ Shannon Anderson
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CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served a true and correct copy of the forgoing *Motion to Strike* and associated documents via electronic mail on this the 30th day of November, 2009 to the following:

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