

JUL 11 2005

**BEFORE THE WYOMING ENVIRONMENTAL QUALITY COUNCIL** John A. Lorenzon, Director  
Environmental Quality Council

In Re: Objection of Majestic Petroleum Operations, LLC )  
to Buckskin Mining Company Permit Transfer, ) Docket No. 05-4803  
Permit 500-T6, TFN 4 4/4173 )

**MOTION TO DISMISS**

In accordance with Chapter II, Sections 1 and 3, Environmental Quality Council (EQC) Rules of Practice and Procedure Applicable to Hearings in Contested Cases, Buckskin Mining Company (Buckskin), by and through its undersigned attorneys, hereby moves the EQC for an order dismissing the above-captioned objection. As the basis for this motion, Buckskin submits the eight (8) objections by Majestic Petroleum Operations, LLC (Majestic) are insufficient as a matter of law to provide a basis for agency denial of the permit transfer as more specifically detailed as follows:

1. Objection #1 alleges that the new permit holder has not demonstrated the requisite ability to meet the obligations of a permit holder pursuant to W.S. § 35-11-408. This objection fails to provide sufficient notice to Buckskin of the underlying basis or contentions supporting the objection, and thereby violates Buckskin's procedural due process rights. *See Amoco Production Company v. Wyoming State Board of Equalization and Wyoming Dept. of Revenue*, 7 P.3d 900 (Wyo. 2000), *In the Matter of the Worker Compensation Claim of Wesaw*, 19 P.3d 500 (Wyo. 2001), *Dorr v. Wyoming Board of Certified Public Accountants*, 21 P.3d 735 (Wyo. 2001), and *Davis v. City of Cheyenne*, 88 P.3d 481 (Wyo. 2003).
2. Objections #2-7: To the extent that the issues challenge the rights granted under the current valid permit, these issues should have been raised when Permit 500-T-6 went to public notice in 2001. No objections were received on this permit. See

Exhibit 1. Therefore, objections to matters falling within the valid permit cannot be raised at this late date. To the extent that the issues in objections #2-7 relate to Buckskin's duties under a federal lease, these issues are contractual in nature between the lessor and lessee. The EQC, as an administrative agency, does not have the power to settle and adjudicate the rights of parties under a contract. *Preferred Energy v. State Board of Equalization*, 890 P.2d 1110 (Wyo. 1995) citing *Tri-County Electric Ass'n, Inc. v. City of Gillette*, 525 P.2d 3, 9 (Wyo. 1974). Finally, to the extent that the issues raised in objections #2-7 relate to any mining and reclamation plan associated with the federal lease, the permit transfer does not include any mining and reclamation plan for the federal lease. Such a plan would have to be submitted as a permit revision. Thus all issues raised in objections #2-7 are either raised too late for jurisdiction to vest with the EQC, or they fall outside the jurisdiction of the EQC, or they are irrelevant to the permit transfer.

3. Objection #8 alleges that the transfer application was not made available for review at the office of the Campbell County Clerk. This objection is unfounded as shown in the attached Exhibit 2.

In consideration of the above, Buckskin respectfully requests the EQC enter an order expediting dismissing the above-captioned objection with prejudice.

DATED this 11th day of July, 2005

ATTORNEYS FOR BUCKSKIN

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(307) 634-3210  
(307) 778-7118 (fax)

CERTIFICATE OF SERVICE

I, Nancy Freudenthal, one of the attorneys for Buckskin, in the above-entitled and numbered cause, do hereby certify that on or before the 11<sup>th</sup> day of July, 2005, I caused a true and correct copy of the foregoing pleading to be served as follows:

R. Douglas Dumbrill	<input checked="" type="checkbox"/>	U.S. Mail
Lubnau, Bailey & Dumbrill, PC	<input type="checkbox"/>	Hand Delivery
P.O. Box 1028	<input type="checkbox"/>	Facsimile
Gillette, WY 82717-1028	<input type="checkbox"/>	Federal Express
	<input checked="" type="checkbox"/>	Electronic submission
John Burbridge	<input checked="" type="checkbox"/>	U.S. Mail
Attorney General's Office	<input type="checkbox"/>	Hand Delivery
State Capitol	<input type="checkbox"/>	Facsimile
Cheyenne, WY 82002	<input type="checkbox"/>	Federal Express
	<input checked="" type="checkbox"/>	Electronic submission

Nancy Freudenthal

cc John Corra, DEQ Director

**STATE DECISION DOCUMENT  
TRITON COAL COMPANY, LLC, BUCKSKIN MINE  
PERMIT 500-T6**

Under a letter of August 15, 2000, Mr. Scott Benson of Triton Coal Company, LLC, submitted an application to renew Permit No. 500 for the Buckskin Mine. The application is for a 'straight' renewal. The Department of Environmental Quality Director and Land Quality Division Administrator signed the Form 1 with an effective date of May 29, 2001, 2001. The Director and Administrator had previously approved Licenses to Mine No. 500-L3 and L4.

The renewal updated specific components of the Adjudication Book No. 1 volume of Permit No. 500 as outlined on the Index of Changes. Five conditions have been placed on the approval and are typed onto the approval letter and the Form 1.

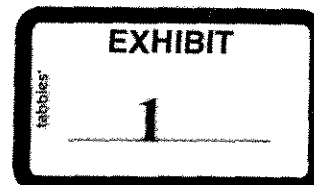
*No. 7. The schedule required by W.S. §35-11-406(a)(xiv) and the compliance review conducted by WDEQ/LQD suggest that all surface coal mining operations owned or controlled by the applicant are currently in compliance with this act and all applicable State and Federal laws, or that any violation has been or is in the process of being corrected to the satisfaction of the authority, department or agency which has jurisdiction over the violation (W.S. §35-11-406(n)(vii)).*

Compliance with the Wyoming Environmental Quality Act and all applicable Federal Laws was confirmed with the Applicant Violator System checks. No violations were reported. No other states reported any noncompliance. Compliance with the WDEQ Air, Water and Land Quality Divisions was verified.

*No. 16. Public notice was given in the Gillette New Record from January 19, 2001 to February 9, 2001. No objections to the permit were received (W.S. §35-11-406(j) and (k)).*

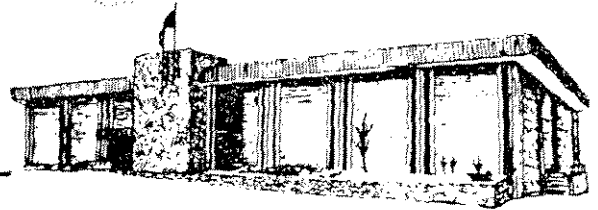
Signed this 19 day of May, 2001.

  
\_\_\_\_\_  
Administrator, Land Quality Division



Office of

# COUNTY CLERK



CAMPBELL COUNTY

PHONE (307) 682-7285 — P.O. Box 3010 — GILLETTE, WYOMING 82717

## A F F I D A V I T

TO WHOM IT MAY CONCERN:

This is to certify that Julie Gerlach of Aqua Terra consultants Inc. on behalf of Buckskin Mining Co.

has this date Filed \_\_\_\_\_ Left for Review XX the following:

Wyoming Coal Mine Permit No. 500-T6 transfer to Buckskin Mining Company TFN 4 4/173

\_\_\_\_\_ in the office of County Clerk.

If filed, these items will remain in the office of Campbell County Clerk permanently.

If left for review, they will be available to the public until August 10, 2005

\_\_\_\_\_. After that time the responsible party(ies) will be able to remove the volume(s) from the office of Campbell County Clerk.

Received this 6th day of June, 19 2005.

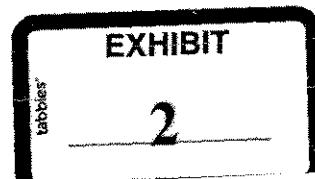
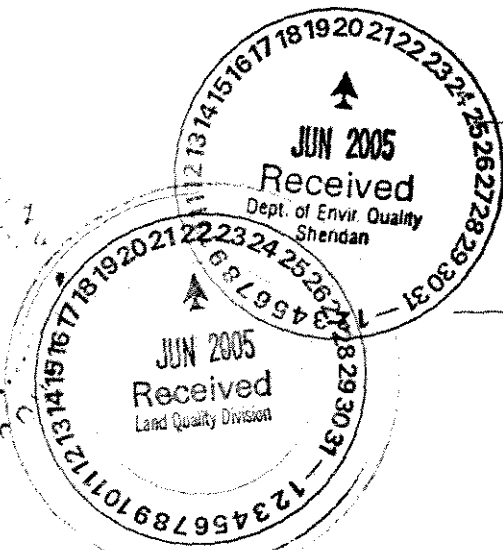
Susan F. Saunders

Susan F. Saunders, Campbell County Clerk

Anelia M Snider

Deputy

CAMPBELL COUNTY CLERK



44/173