

SEP 02 1976

Ardelle M. Kissler, Clerk
Environmental Quality Council

In the Matter of Objections)
to PETER KIEWIT SONS' CO.,)
Application for a Mining Permit)
(Whitney Mine)

DOCKET NO. 197-76

MOTION FOR HEARING

COMES NOW the Powder River Basin Resource Council and respectfully shows the council as follows:

1. That Gerald W. Moravek and Mary L. Moravek are members of the Powder River Basin Resource Council and have been individual protestants herein against the above application of Peter Kiewit Sons' Co.

2. That Powder River Basin Resource Council verily believes that by reason of the threat of litigation that the said Gerald W. Moravek and Mary L. Moravek have withdrawn their protest herein and that said withdrawal was not based upon any facts going to the merits of their protest, but that their withdrawal occurred solely as a result of the threat of continued litigation by Whitney Benefits, one of the intervenors herein against Gerald W. Moravek and Mary L. Moravek.

3. That Gerald W. Moravek and Mary L. Moravek are citizens of the United States, of the State of Wyoming, and of Sheridan County, and are property owners in the alluvial valley floor involved in this hearing. That because of the aforesaid, they had unique information to provide the council on the hearing of the above application, but that because of the said coercion and threats of continued litigation, they were obliged to withdraw their protests, and have withdrawn as protestants.

4. That the aforesaid threat of litigation was done without just legal cause and for the sole purpose of accomplishing the withdrawal of the Moraveks as protestants. That the undersigned verily believes and alleges that others of its members have also been told that they, too, will be sued if they continue in their protests. That the said intervenor has sued certain "John Does", who said intervenor says are

persons who have aided and abetted the said Moraveks in drawing up their protest, and that said intervenor has threatened to sue such persons who have aided and abetted the said Moraveks in making their said protest. That members of the Powder River Basin Resource Council consider the aforesaid threats as being directed against them and that the continued threats, both directly and indirectly against both specified and unspecified persons who are involved in the protest herein, deprives this council of the opportunity to receive information freely and fully from all prospective persons who wish to protest said application.

5. That the aforesaid threats of coercion are a direct threat to the viability of this Council in that it cannot function without receiving information from all sources. That in order for this Council to perform its function, it must undertake such action or actions as will insure said Council that it will receive, both in this case and in future cases, all information as may be available to it. People must be assured that they can protest without threat of suit.

The undersigned shows this council that a member of the Whitney Benefit board is likewise a principal shareholder in Peter Kiewit Sons' Co. A hearing should be held to determine to what extent, if any, there has been collusion between the last mentioned entities in the case of the Moraveks, and to what extent other persons have been threatened, directly or indirectly, who may be persons who are either members of the Powder River Basin Resource Council or members of the public at large who, but for said threats, would wish to voice protests against the within application.

6. That this council has jurisdiction to fully hear this matter in order to establish such rules, regulations, and guidelines as may be necessary to prevent undue influence and coercion, both in this case and in future applications. That this council has jurisdiction to fully investigate said matter further in order to protect and preserve its own

integrity.

7. That this council has jurisdiction, upon a hearing and finding that undue influence has been utilized, to deny the application on the basis of its inherent impropriety.

8. That a hearing in said matter is further required in order to preserve the integrity of the Powder River Basin Resource Council and its membership. In this regard, it is shown the council that if threats of the kind suggested herein can be made with impunity against protestors, to the end that they cannot perform their function freely, then the entirety of the membership of the Powder River Basin Resource Council is subject to such threat and coercion, and the organization itself can be destroyed thereby, so that said hearing on said matter is equally important to the ultimate survival of the undersigned.

9. That the Moraveks have information which ought to be presented to the council at the time of the hearing herein, but that under the present circumstances, they are afraid to present said matters to the council, so that the undersigned's protest is substantially weakened thereby.

WHEREFORE, the undersigned respectfully prays the council as follows:

a. That this matter be set for hearing before the full council.

b. That this council authorize the issuance of subpoenas under its subpoena power in order that testimony may be taken under oath of all persons who may have any information dealing with the application contained herein.

c. That upon a hearing hereof, this council finds that Peter Kiewit Sons' Co. and Whitney Benefits, either or both of them, have individually or jointly, or in concert, used undue influence to suppress the free presentation of facts and information to this committee.

d. That the council thereafter set such guidelines, and adopt such further rules and regulations as may be necessary to protect the public at large, the council, the Powder River Basin Resource Council, the Moraveks, and all other individuals from such coercion and undue influence.

e. That should the council find that this application is tainted with such undue influence and coercion, that the council refuse to issue said application and refuse to permit said applicants, or anyone on their behalf, to reap the benefits of such undue influence and coercion.

f. The hearings officer of the council, at the earliest possible time, advise all concerned parties as to the hearing date set on this application before the full council.

Dated this 31st day of August, 1976.

Respectfully submitted,
POWDER RIVER BASIN RESOURCE
COUNCIL

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