

in lieu of consent. BHC's claim that this Council has no jurisdiction is another misplaced attempt to prevent Brook from completing the permit process. Even the Department of Environmental Quality has reviewed Brook's mine and reclamation plans to decide if they meet all "regulatory constraints" and found only the consent issue remains. (Exhibit A, Email.) The Department has not said that it needs the district court litigation to end before it gains jurisdiction over the permit process. And this Council does not need to wait for the litigation to end either.

Therefore, Brook requests that the Council confirm it has jurisdiction to decide the factual and legal elements for an order in lieu of consent and allow this process to move forward.

ARGUMENT

This Council exists to "hear and decide disputes arising from the implementation of the Environmental Quality Act." *Platte Dev. Co. v. State, Env'tl. Quality Council*, 966 P.2d 972, 975 (Wyo. 1998). That mandate requires the Council to hear evidence that the parties present and make findings of fact based on that evidence. *See* Wyo. Stat. Ann. § 16-3-107(j), (o), (r). In addition to fact finding power, the Council has authority to interpret the meaning of terms within the Act. *See Platte Dev. Co.*, 966 P.2d at 975-76. Together, this authority makes the Council a quasi-judicial entity that makes factual findings and legal conclusions.

Here, the statute grants the Council the power and duty to hear evidence about every element of the order in lieu standard, including Brook's legal right to mine coal by surface mining methods. Wyo. Stat. Ann. § 35-11-406(b)(xii)(E). That will require the Council to receive and evaluate documents like the 1954 Deed that granted Brook the right to mine coal using by any "necessary or convenient" means. (*See* Exhibit A to Brook's Petition for an Order in Lieu of Consent.) The Council will then have to decide whether, as a matter of law, the 1954 Deed grants Brook the legal authority to mine coal using surface mining methods sufficient to

satisfy the requirements for an order in lieu of consent. Should BHC dispute any part of that analysis, then the Council can decide the dispute.

BHC's claim to the contrary that any disputes over the 1954 Deed are "subject to the District Court's jurisdiction" is disingenuous. In the litigation that is actually subject to the district court's jurisdiction, BHC moved to dismiss the case because the Department of Environmental Quality had not yet issued a mine permit. BHC claimed that "the Wyoming Department of Environmental Quality is the **only entity** that can give Ramaco and Brook the right to start mining on Big Horn Coal's property." (Exhibit A, Excerpt from Hearing Transcript on BHC's Mot. to Dismiss, 5.) BHC went on to point out that until the Department issues a permit the scope of Brook's mining would be unknown. (*Id.* at 6.) And given the uncertainty, the district court could **not** grant final relief and therefore lacked jurisdiction. (*Id.* at 6-8.)

In other words, BHC told the district court that the agencies responsible for issuing a mining permit needed to act before the district court had jurisdiction. Now that Brook has asked both the Department and this Council to act, BHC asserts the district court has jurisdiction to decide the issue before the relevant agencies act. According to BHC, the decision-maker on the issue of Brook's legal authority to mine is always somewhere else.

That is not how the process works, nor should it be. As part of its permit application process before the DEQ, Brook has asked this Council to issue an order in lieu of consent. The Council has the jurisdiction to decide that issue, pending litigation or not.

CONCLUSION

BHC's claim that the district court has jurisdiction over Brook's legal authority to mine makes little sense. The pending litigation does not change this Council's statutory duty and authority to decide the factual and legal issues for an order in lieu of consent. Therefore, Brook

requests that the Council confirm it has jurisdiction to decide the factual and legal elements for an order in lieu of consent.

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Thomas L. Sansonetti (Wyo. State Bar # 43354)
Isaac N. Sutphin, P.C. (Wyo. State Bar # 6-3711)
Jeffrey S. Pope (Wyo. State Bar # 7-4859)
HOLLAND & HART LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82003-1347
Telephone: (307) 778-4200
tlsansonetti@hollandhart.com
insutphin@hollandhart.com
jspope@hollandhart.com

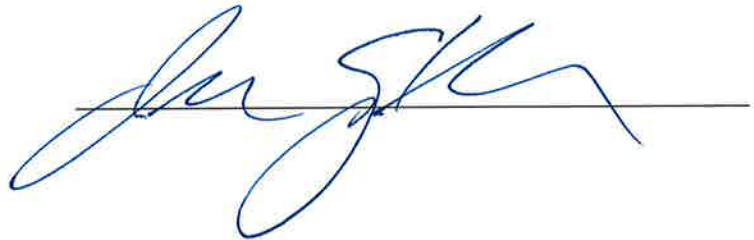
ATTORNEYS FOR PETITIONER
BROOK MINING COMPANY, LLC

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2016, I served a true and correct copy of the foregoing by United States mail, postage prepaid and addressed to the following:

Haultain Corbett
50 East Loucks Street
Suite 110
PO Drawer 5059
Sheridan, WY 82801-5059
hal@lonabaugh.com

Lynnette J. Boomgaarden
Crowley Fleck, PLLP
237 Storey Boulevard, Suite 110
Cheyenne, WY 82009
lboomgaarden@crowleyfleck.com



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