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ATTORNEYS FOR RESPONDENT
PADLOCK RANCH COMPANY

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

IN RE BROOK MINE APPLICATION)
) Civil Action No. 16-1601
)

**RESPONDENT PADLOCK RANCH COMPANY'S PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

COMES NOW Respondent Padlock Ranch Company ("Padlock"), and pursuant to the order of the Environmental Quality Council (the "EQC" or "Council"), submits its proposed findings of fact, conclusions of law, and order, advising the Council as follows:

I. FINDINGS OF FACT

A. Procedural Summary

1. In or around October 2015, Ramaco Wyoming Coal, LLC ("Ramaco") submitted the mine and reclamation plan at issue (the "Mine and Reclamation Plan") to the Wyoming Department of Environmental Quality ("WDEQ") for the purpose of obtaining a permit to operate the Brook Mine. (Tr. Vol I, p. 52 ll. 13-16; Brook Ex. 1).

2. The current version of the Mine and Reclamation Plan was submitted to the WDEQ in or around February 2016. (Tr. Vol. I, p. 51 ll. 5-9; p. 67 ll. 3-13; Brook Ex. 1.)

3. The proposed Brook Mine is located in part on property owned by Padlock. (Brook Ex. 1.)

4. Padlock has not granted surface owner consent to the Mine and Reclamation Plan as required by the Wyoming Environmental Quality Act ("WEQA"). (Tr. Vol. I, p. 66 ll. 17-25.)

5. On or about March 16, 2016, Ramaco's affiliate, Brook Mining Company, LLC ("Brook")¹, submitted a request to the Council for an order in lieu of surface owner consent pursuant to Wyo. Stat. § 35-11-406(b)(xii).

6. An evidentiary hearing on Brook's request was conducted by the Council on August 17 and 18, 2016. A decision on the matter was continued until the next meeting of the Council on September 28, 2016.

B. Whether Ramaco and Brook's proposed surface use for the Brook Mine, including proposed routes of egress and ingress, substantially prohibits the operations of Padlock

7. Padlock owns a portion of the surface estate within the proposed Brook Mine permit boundary, which lands are described as follows:

Township 57 North, Range 84 West, 6th P.M., Sheridan County, Wyoming
Section 7: E $\frac{1}{2}$ SE $\frac{1}{4}$
Section 8: S $\frac{1}{2}$
Section 17: All
Section 18: E $\frac{1}{2}$

¹ As represented by Brook in its March 16, 2016 request to the Council for an order in lieu of surface owner consent, Ramaco is the owner of the coal and mining interests in the lands at issue, and Brook is the developer and operator of such interests by virtue of an October 31, 2014 lease agreement between Brook and Ramaco.

Section 20: Part located north of I-90 and Tongue River

(the "Padlock Lands"). (Tr. Vol. I, p. 73 ll. 9-25, p. 74 l. 1, p. 206 ll. 1-16; Respondents' Demonstrative Exs. 1, 2²; Brook Ex. 1 - Ex. MP 1-1; Brook Ex. 14.)

8. Padlock also holds the State of Wyoming Grazing Lease No. 2-5449 on Section 16, T57N/R84W, consisting of 640 acres (the "State Section"). The State Section is not included within the Brook Mine permit area, but lies immediately adjacent to and is operated by Padlock in conjunction with the Padlock Lands. (Tr. Vol. I, p. 206 ll. 1-16; Brook Ex. 29.)

9. The Padlock Lands and the State Section make up the Hidden Water Pasture (approximately 1800 acres), which is one of several pastures³ in Padlock's 15,000 acre Flying V grazing unit. (Tr. Vol. I, p. 206 ll. 1-25, p. 207 ll. 1-16, p. 215 ll. 1-21; Respondents' Demonstrative Ex. 2.)

10. Padlock uses the series of pastures in the Flying V unit to graze a management group of approximately 300 to 500 head of cattle starting in the spring during calving season until the cows are pregnancy tested in the fall. In some years, the cattle are rotated through the Flying V unit starting in the north and working their way through the pastures down to the Hidden Water and Acme pastures on the south end, and in other years the rotation schedule is reversed. (Tr. Vol. I, p. 206 ll. 17-25, p. 207 ll. 1-13, p. 210 ll. 15-25, p. 211, p. 212, p. 213, p. 214 l. 1; Padlock Exs. 23, 25, 26, 27, 28.)

² Copies of Respondents' Demonstrative Exhibits 1, 2 and 3 are attached hereto.

³ Other pastures in the Flying V Unit include Acme, Billie's, East Mine, West Mine, Slater Creek S, Slater Creek N, Pete Leone, Dan's, Morgan's Corner, and French Springs. (Tr. Vol. I, p. 206 ll. 23-25, p. 207 ll. 1-16; Respondents' Demonstrative Ex. 2.)

11. The number of cattle grazed in the Flying V unit each year is dependent on multiple factors, such as feed availability, ranch inventories, the speed of rotations, and weaning. (Tr. Vol. 1, p. 210 ll. 15-21; Padlock Exs. 25, 26, 27, 28.) Based on factors like these, Padlock prepares a grazing plan of anticipated pasture use each year. (Tr. Vol. I, p. 215 ll. 24-25, p. 216 ll. 1-13; Padlock Ex. 24.)

12. The grazing plan typically involves rotating the cattle to a different pasture in the Flying V unit every ten days to three weeks. (Tr. Vol. I, p. 210 ll. 15-25, p. 211 ll. 1-10.) Movement of cattle from one pasture to the next can take one to four days, depending on the circumstances. The cattle are moved through a gate by two to four cowboys on horseback. As compared to moving dry cows, moving cow/calf pairs can be difficult and time consuming because of the need to keep the cattle paired up. The movement must be done slowly to avoid stress for the cattle and help ensure calves are healthy. (Tr. Vol. I, p. 210 ll. 15-25, p. 211, p. 212 ll. 1-5.)

13. Padlock keeps a record of the number of cattle and how long they are in each pasture, and whether or not the cattle are fed hay while in a particular pasture. (Tr. Vol. I, p. 212 ll. 21-25, p. 213, p. 214; Padlock Exs. 23, 25, 26, 27, 28.) Records for 2012 through 2015 show that the Hidden Water and Acme pastures were used in each of the last 4 years for an average of 19,225 head days per year, and are scheduled to be used similarly again this year. (Tr. Vol. I, p. 250 ll. 14-25, p. 251 ll. 1-9, Padlock Exs. 23, 24.)

14. Between 2007 and 2009, Padlock constructed a water system in the Flying V unit that consists of a water line and a series of water tanks, four of which are located in the Hidden Water pasture. (Tr. Vol. 1, p. 207 ll. 17-22; Respondents' Demonstrative Ex.

2; Brook Ex. 14.) The cost to construct this water system was \$130,000. (Tr. Vol. I, p. 208 ll. 1-6.) This water system is the primary source of water in the Hidden Water pasture because it can accommodate the large water requirement of the management group of cattle that graze the Flying V unit. The only other source of water in the Hidden Water pasture is located at the very southern end, at the bottom side of the pasture, off the banks of the Tongue River, and is just not comparable to the system of water tanks in the same pasture. (Tr. Vol. I, p. 208 ll. 10-25, p. 209 l. 1.)

15. Padlock also has a set of corrals in the Acme pasture, which are located on the State Section south of the Tongue River. These corrals, which are a permanent set of facilities that include sorting pens and the like, are used primarily for pregnancy testing and weaning and shipping cattle. The corrals are also used for shipping bulls, as they are in close proximity to Padlock's isolated summer bull pasture⁴ in Section 21 south of the Big Horn Coal property. (Tr. Vol. I, p. 207 ll. 17-25, p. 209 ll. 11-25, p. 210 ll. 1-11.) This is the only set of corrals on the entire Flying V unit. (Tr. Vol. I, p. 210 ll. 12-14.)

16. The Hidden Water pasture is also a designated walk-in area for the Game and Fish Department for public hiking, hunting, fishing, and other similar activities for which Padlock receives compensation. (Tr. Vol. I, p. 217 ll. 11-24; Respondents' Demonstrative Ex. 3.)

17. There is a two-track road through the Hidden Water pasture. The road comes in off of the Acme exit from I-90 and goes north through the top east end of the pasture. (Tr. Vol. I, p. 217 ll. 3-10.) The road is fairly rough and difficult to traverse in

⁴ This pasture is referred to as Jensik Hill on Respondents' Demonstrative Ex. 2.

the winter. During times of high fire danger, the road is used sparingly because feed has grown up in the center of it. (Tr. Vol. I, p. 218 ll. 1-13.)

18. In its operation of the Brook Mine, Brook plans to use a hybrid of underground and surface mining, referred to as Highwall Mining. (Tr. Vol. I, p. 33 ll. 24-25; p. 34 ll. 1-15; Brook Ex. 1.) To implement this mining technique, Brook must dig trenches that are approximately 150 to 200 feet wide and deep enough for a High Wall Miner to work underground. (Tr. Vol. I, p. 45 ll. 18-25; p. 187, ll. 12-19.) Two of the proposed trenches traverses the entire north end of the Hidden Water pasture starting in approximately year four or five of the mine. (Tr. Vol. I, p. 216 ll. 14-23; Brook Ex. 1- Ex. MP 1-1; Padlock Ex. 20.)

19. The trench across the Hidden Water pasture will sever Padlock's waterline that feeds the four water tanks in the pasture, and will cut off the Hidden Water and Acme pastures, including the set of corrals in the State Section, from the rest of the Flying V unit. (Tr. Vol. I, p. 216 ll. 14-25, p. 217 ll. 1-2; Padlock Exs. 19, 20.) After this, the only way to use the southern portion of the Hidden Water pasture and 490 acre Acme pasture would be to truck cattle to it, as opposed to the less disruptive method of trailing cattle from the north with horses. (Tr. Vol. I, p. 231 l. 25, p. 232 ll. 1-11; Brook Ex. 14.)

20. Adjacent to the trench, Brook also proposes a primary haul road across the Hidden Water pasture, which could be constructed any time between the first and fourth year of the mine and continue through the life of the mine. (Brook Ex. 1 – Ex. MP 3-1; Brook Ex. 1 – Ex. MP 1-1; Padlock 20.) Brook projects it will mine 2 million tons of coal per year. (Brook Ex. 1- Table MP 1-2; Padlock Ex. 18.) At this rate, there will be a semi-

truck with a full sized trailer and a pup traveling the primary haul road approximately every 9 minutes, 24 hours per day, 365 days per year. (Padlock Ex. 19.) Further, Brook represents that the speed limit of these trucks will be 45 m.p.h. (Brook Ex. 22 at p. 53.) Brook also represents that the two track road through the Hidden Water pasture may be used as an ancillary haul road, but does not indicate when or what improvement would be done to the road. (Brook Ex. 1 – Ex. MP 3-1.)

21. The mine plan also provides for the placement of topsoil stockpiles on the Hidden Water pasture, one of which is directly on top of one of Padlock's existing water tanks. (Brook Ex. 1 – Ex. MP 4-3; Brook Ex. 14.)

22. Further, various mine facilities, such as a change house, equipment service shop, fuel station, substation for power, septic tank and leach field, coal handling facilities, explosive storage, and other additional facilities described in the mine plan may be located on the Padlock Lands. (Brook Ex. 1; Tr. Vol. I, p. 80 ll. 3-12, p. 81 ll. 1-8, p. 116 ll. 15-25, p. 117 ll. 1-14.)

23. Although Padlock and Ramaco representatives have recently discussed possible routes for cattle to cross the trench and primary haul road, possible locations of fences around the mine disturbance area, and possible ways to mitigate destruction of the Padlock water system, none of this type of detail is included in the mine plan, nor have the parties reached an agreement that addresses these issues. (Tr. Vol. I, p. 100, ll. 2-13, p. 219 ll. 8-25, pp. 220-227, p. 228 ll. 1-8.)

24. The estimated area of mine disturbance in the Hidden Water pasture is 520 acres. However, the Brook Mine will substantially prohibit Padlock's use of the full 1800

acres of the Hidden Water pasture and the 490 acres in the Acme pasture, which Padlock currently uses as part of its grazing rotation on the Flying V unit. (Tr. Vol. I, p. 246 ll. 10-21; Brook Ex. 14.) It is not practical to shut down the primary haul road for up to four days to move cattle through the mine permit area considering the volume of traffic (Padlock Ex. 19); it is not practical to have cowboys and livestock be subject to compliance with Mine Safety and Health Administration (“MSHA”) regulations, which requires 40 hours of training, annual re-certifications, use of flags, hard hats, and whatever other mine safety policies are in place (Tr. Vol. II, p. 35 ll. 18-25, p. 36 ll. 1-12); and it is simply not safe to subject employees and livestock to the hazards inherent within the boundaries of an active mine (Tr. Vol. I, p. 228 ll. 3-5). For these reasons, the Brook Mine will effectively prevent Padlock’s use of the Hidden Water and Acme pastures, the head days provided by these pastures will be lost to Padlock⁵, the Flying V unit will effectively be without a set of accessible working corrals, all resulting in a substantial prohibition of Padlock’s current operations on the Flying V unit. (Tr. Vol. I, p. 230 ll. 16-25, p. 231, p. 232 ll. 1-16, p. 245 ll. 20-25, p. 246 ll. 1-21.)

II. CONCLUSIONS OF LAW

1. The Wyoming Environmental Quality Act (“WEQA” or the “Act”) provides that a mining application must contain an instrument of consent from the surface landowner, if different from the owner of the mineral estate, to the mining plan and the reclamation plan. Wyo. Stat. § 35-11-406(b)(xii).

⁵ Replacement of head days by leasing other property could cost Padlock as much as \$35 per AUM. (Tr. Vol. I, p. 245 ll. 6-9.)

2. The EQC shall issue an order in lieu of consent if it finds, among other things, “that the use does not substantially prohibit the operations of the surface owner.” Wyo. Stat. § 35-11-416(b)(xii)(C).

3. Brook’s use of the Padlock Lands substantially prohibits the operations of Padlock by effectively preventing Padlock’s use of the Hidden Water and Acme pastures and the set of corrals in the State Section for Padlock’s grazing rotation in the Flying V Unit, and by severing Padlock’s water system.

4. Because Padlock’s operations on the Padlock Lands and the State Section are substantially prohibited by Brook’s mine plan, Brook is not entitled to an order in lieu of surface owner consent, and Brook’s application should therefore be denied.

DATED this 23rd day of September, 2016.

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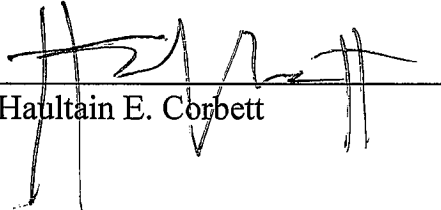
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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the within and foregoing was sent to the following by depositing a copy of the same in the U.S. Mail, postage prepaid, on this 23rd day of September, 2016.

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