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ATTORNEY FOR RESPONDENT  
BIG HORN COAL COMPANY

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

IN RE BROOK MINE APPLICATION )  
 ) Civil Action No. 16-1601  
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**RESPONDENT BIG HORN COAL COMPANY’S COMMENTS AND OBJECTIONS TO  
PROPOSED ORDER**

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Big Horn Coal Company (BHC), by and through its undersigned counsel, and in response to the November 15, 2016 email from Jim Ruby of the EQC to counsel for the parties, submits these comments and objections to the Proposed Order in the captioned matter. In submitting these comments and objections, BHC does not waive and specifically hereby reserves all rights as an interested party to file written objections and request a hearing before the EQC under W.S. § 35-11-406(k), all rights to protection under W.S. § 35-11-416(a), all rights to appeal any order entered by the EQC, and all rights, arguments and defenses in Brook Mining Company, LLC v. Big Horn Coal Company, Civil Action No. CV 2014-372.

**I. PROPOSED FINDINGS OF FACT**

BHC objects to Finding of Fact 26, which states “The methods used by Brook Mine to extract its coal are necessary or convenient.” This finding is not necessary to support the EQC’s conclusions of law and order granting Brook Mine’s petition for an order in lieu of consent as it is not a finding

required by Wyo. Stat. Ann. § 35-11-406(b)(xii). For this reason, Finding of Fact 26 is outside the EQC's statutory authority pursuant to Wyo. Stat. Ann. § 35-11-406(b)(xii) and could prejudice the full and fair adjudication of BHC's rights in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372 (Fourth Judicial District Court, Sheridan County).

## II. PROPOSED CONCLUSIONS OF LAW

BHC objects to the incorporation of Finding of Fact 26 into the Principals of Law for the reasons set forth above. BHC further objects to Conclusion of Law 54 on grounds that the statement “[t]he 1954 warranty deed grants Brook Mine the legal authority to extract coal by surface mining methods under Big Horn Coal’s lands” is overbroad and could prejudice the full and fair adjudication of BHC’s rights in *Brook Mining Company, LLC v. Big Horn Coal Company*, Civil Action No. CV 2014-372 (Fourth Judicial District Court, Sheridan County). In order to avoid acting outside its statutory authority by improperly purporting to adjudicate private property rights between BHC and Brook Mine under the 1954 Deed and 1983 Release Agreement (both of which are before the district court), BHC requests that the EQC revise Conclusion of Law 54 to avoid any appearance that the EQC’s determination purports to adjudicate the contested issues pending in the district court. For example, and with the recognition that BHC preserves all appeal rights and objections as stated above, an alternative wording for Conclusion of Law 54 that does not implicate these issues could be: “The Council finds that Brook Mine has proved the fifth element – that for purposes of issuing an order in lieu of consent under W.S. § 35-11-406(b)(xii), and for those purposes only, the 1954 deed evidences Brook Mine’s legal authority to extract coal by surface mining methods under Big Horn Coal’s lands.”

DATED: this 16<sup>th</sup> day of November, 2016.

By: *Lynette J. Boomgaarden for:*


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## CERTIFICATE OF SERVICE

I hereby certify that I served a true and complete copy of the foregoing upon the following on the 16<sup>th</sup> day of November, 2016, by electronic filing with the Environmental Quality Council and by United States mail, postage prepaid and addressed to the following:

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