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ATTORNEYS FOR OBJECTORS  
BIG HORN COAL COMPANY

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

IN RE BROOK MINE APPLICATION )  
 ) Docket No. 17-4801  
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TFN 6 2-025 )

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**OBJECTOR BIG HORN COAL COMPANY’S OBJECTION TO PROCEDURE  
AND SCHEDULING AS A VIOLATION OF DUE PROCESS**

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Big Horn Coal Company (hereinafter “BHC”), by and through it undersigned counsel, Crowley Fleck PLLP, hereby submits this Objection to Procedure and Scheduling as a Violation of Due Process.

On February 6, 2017, Jay A. Gilbertz of Yonkee & Toner, LLP, on behalf of Objectors Mary Brezik-Fisher and David Fisher, filed a formal objection to the procedure and scheduling of this contested case hearing as violating established and applicable rules of procedure and fundamental procedural due process rights. *See Objection to Procedure and Scheduling Which Violated Objectors’ Due Process Rights and Demand that Discovery and Hearing be Modified to Comport with Due Process*, filed on Feb. 6, 2017 (hereinafter “*Objection to Procedure and Scheduling*”). Having reviewed Mr. Gilbertz’s

*Objection to Procedure and Scheduling*, BHC hereby adopts, incorporates and joins Mr. Gilbertz's Objection and also joins in the proposed solution contained therein. *See id.*

On February 2, 2017, the parties to this matter appeared for a pre-hearing conference before the Environmental Quality Council (EQC) where the hearing in this matter was set to begin on February 13, 2017 at 9:00 a.m. and all discovery was required to be conducted from February 6-10, 2017, a matter of one business week. *See Amended Order*, dated February 2, 2017. At this conference, Counsel for BHC (as well as several other parties) affirmed that it had requested an informal conference with the Wyoming Department of Environmental Quality ("DEQ") Director pursuant to W.S. § 35-11-406 and objected to this significantly truncated scheduling of the contested case proceeding on due process grounds.


As stated in the *Objection to Procedure and Scheduling* filed by Mr. Gilbertz, the schedule and procedure currently imposed on the parties would deny the Objectors their due process rights to a meaningful opportunity to be heard and express their objections. For the sake of brevity, these arguments will not be recited in this Objection, but instead are incorporated through this reference.

BHC also joins Mr. Gilbertz's proposed solution under which the hearing may still commence on February 13, 2017, but with the condition that the proceedings begin with the DEQ presenting its evidence pertaining to the draft permit which will then be followed by Brook Mine's presentation of evidence, to the extent time allows. From here, the proceedings would be continued to allow the parties to conduct meaningful discovery in anticipation of the resumption of the hearing related to the contested issues. This solution

would resolve the procedural due process issues and is most practicable considering that the evidence in this matter likely cannot be presented in the two-day timeframe currently scheduled. See Amended Order, dated February 2, 2017.

WHEREFORE, for the reasons stated herein and as more particularly stated in the *Objection to Procedure and Scheduling* filed by Mr. Gilbertz, BHC joins the objection of Mr. Gilbertz on behalf of Objectors Mary Brezik-Fisher and David Fisher and requests that the EQC enter an order directing the hearing dates of February 13 and 14, 2017 to include only evidence from DEQ and possibly Brook Mine, and that after this time the hearing will be continued for discovery and resumption for all further evidence at a later date.

DATED: February 6, 2017.

By   
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## CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2017, a true and correct copy of the foregoing was served by email to the following:

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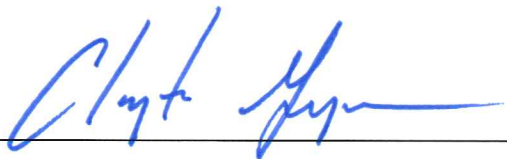
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