



3. Can Brook Mine prove that all conditions precedent to the issuance of a coal mining permit have been met?
4. Are special conditions or contingency requirements appropriate under the unique circumstances of this permit application?

**Brief Factual Background:**

Brook Mine, LLC has applied for a surface coal mining permit. The permit seeks the right to mine for coal in a high-wall mining fashion which includes auguring coal from underneath overburden similar to underground mining. The proposed mine is in close proximity to the important alluvial valley floors of the Tongue River, Goose Creek and Slater Creek drainages. This area and surrounding lands are important farming and agricultural areas and risks to the quality and quantity of both surface and subsurface waters are at issue. The area has also experienced underground mining activities (such mines well predating environmental protection laws) and has a long and well-documented history of subsidence problems associated with those mines. Environmental subsidence damage from underground mining is a matter of historical fact in the area.

During the permit application process, neither Brook Mine, LLC nor the Wyoming DEQ sought the involvement of nor did they allow members of the public or affected landowners an opportunity to be involved or heard. Rather, the permit was declared technically complete without even cursory public involvement and prior to the Administrator making required statutory findings. Only then were the public and affected landowners invited to file formal "objections" and it was suggested any concerns would be addressed in an informal proceeding.

Rather than providing an informal conference, the DEQ shirked the informal process in favor of referring the matter to this Council. This decision forced any interested member of the public into expensive and burdensome contested case litigation just to have their concerns heard. Faced with this impediment, many Objectors simply chose to give up. Even then, Brook Mine engaged in legal efforts to have the Objector's cases dismissed and preclude any public input at all.

The Objectors who remained were then subjected to what appears to be punitive depositions and intrusive discovery at the hands of Brook Mine. The Fishers contend that a hallmark of environmental protection laws is to encourage public participation with the goal of a better permitting process based on the collective wisdom of the regulators and the public. Unfortunately, the Brook Mine permit has proceeded in a fashion of roadblocks, practical punishments and exclusion, rather than on one of simple inclusion.

Fishers contend that the Brook Mine application and plan do not adequately or substantively assess the potential environmental, hydrologic and reclamation hazards presented by this coal mine. For this reason, the scientific basis for the potential environmental impacts is deficient and thus cannot predict the likely ramifications of allowing the mine to proceed. As such, the application must be denied at this time and more scientific and through investigations, conclusions and planning are warranted and necessary before further consideration can be accomplished. The Fishers further contend that Brook Mine's current application is technically deficient and substantively lacking in a number of other ways. Fisher also contend that in any event, any permit should have special conditions

or contingencies which address the unique conditions and necessary landowner protections for this particular and unique mine site.

**WITNESSES AND EXHIBITS:**

The Fishers are separately and concurrently filing a designation of witnesses and exhibits.

DATED this 17<sup>th</sup> day of May, 2017.

YONKEE & TONER, LLP



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**CERTIFICATE OF SERVICE**

I, Jay A. Gilbertz, hereby certify that on the 17<sup>th</sup> day of May, 2017, I served a true and correct copy of the above and foregoing *by electronic transmission*, duly addressed as follows:

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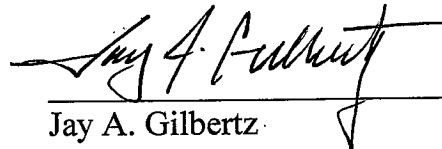
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