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ATTORNEY FOR OBJECTORS
BIG HORN COAL COMPANY

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

IN RE BROOK MINE APPLICATION)
) **Docket Nos. 17-4802, 17-**
) **4803, and 17-4804**
TFN 6 2-025) **(Consolidated)**

**BIG HORN COAL COMPANY’S MOTION TO STRIKE AND RESPONSE
TO DEQ’S COMMENTS ON PROPOSED PERMIT CONDITIONS AND
BROOK MINE’S JOINDER**

Big Horn Coal Company (“Big Horn”), by and through its undersigned counsel of record, hereby submits this *Motion to Strike and Response to DEQ’s Comments on Proposed Permit Conditions and Brook Mine’s Joinder*.

Big Horn agrees with and joins in the *Motions to Strike* of the Fishers’ and Powder River Basin Resource Council regarding *DEQ’s Comments on Other Parties’ Proposed Permit Conditions and Brook Mine’s Joinder in the DEQ’s Comments on Other Parties’ Proposed Permit Conditions*.

There is no question that these filings were not authorized, nor contemplated, by the Environmental Quality Council's *Briefing Order*, dated June 13, 2017. Neither DEQ, nor Brook Mine, requested by motion the ability to file these "comments," but rather injected their positions on their own accord. Only making matters worse, both DEQ and Brook Mine inappropriately used these pleadings as a method to further argue the merits of their position and assert additional legal argument. This practice is unauthorized, prejudicial to the other parties in this matter, and should not be permitted by the Council.

In addition, the comments made by DEQ are disingenuous and misleading. DEQ has attempted to lead the Council to believe that both it and Brook Mine lack access to private property, such as Big Horn's, within the permit area, and that because of this permit conditions requiring access to such property should be modified accordingly. *DEQ's Comments*, p. 2. As this Council is aware from earlier proceedings related to Brook Mine's proposed mining operations, Docket No. 16-1601, Brook Mine has obtained an Order in Lieu of Consent to access Big Horn property. Big Horn has stated it intends to abide by any access provided by a valid Order in Lieu of Consent, and Big Horn has executed a Surface Land Owner's Consent authorizing DEQ to enter upon Big Horn property to carry out mine inspections related to Brook Mine's permitted operations. Tr. Vol. IV, p. 900. The Surface Land Owner's Consent document is attached hereto as **Exhibit A**.

WHEREFORE, for the foregoing reasons and for those reasons set forth in both the Fishers' and Powder River Basin Resource Council's *Motions to Strike* DEQ's Comments on Proposed Permit Conditions and Brook Mine's Joinder of those Comments, Big Horn respectfully requests that the Council strike DEQ's "comments" and Brook Mine's joinder from the record of this matter, and not consider either of these filings in its deliberations or decision in this matter.

DATED: August 1, 2017.

By 
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*Attorney for Objectors
Big Horn Coal Company*

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2017, a true and correct copy of the foregoing was served by email to the following:

Andrew Kuhlmann
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Lynette Boomgaarde

SURFACE LAND OWNER'S CONSENT

Big Horn Coal Company, LLC (Surface Land Owner) CERTIFIES that it is the surface owner of the following described property on which Brook Mining Company, LLC (Applicant) proposes to operate or property which must be crossed to access Applicant's operations as proposed in Applicant's mining and reclamation plans:

As described in the attached Attachment A, incorporated herein

Land Owner and Applicant are parties to an action pending before the Wyoming Environmental Quality Council entitled *In Re Brook Mine Application*, Civil Action No. 16-1601. Without waiving any rights which Land Owner may have in that action or any subsequent appeal, Land Owner hereby grants access to the above described property to the Department of Environmental Quality, Land Quality Division, to enter and carry out mine inspections related to Applicant's permitted operations. Such entry and inspections shall be conducted during normal business hours and in compliance with all applicable federal, state and local laws, permit conditions, and mining industry safety practices. Nothing in this consent should be construed as consent by Land Owner to Applicant's mining and reclamation plans or consent to enter and carry out those mining and reclamation programs on said lands except as may be ordered by the Wyoming Environmental Quality Council or a court of competent jurisdiction.

Dated this 18 day of October, 2016.



Surface Land Owner (Signature)

JORDAN SWEENEY

Name (printed or typed)

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Subscribed and sworn to before me by Dedan Sweeney this 18 day of October, 2016.

Witness my hand and official seal.

SEAL



[Signature]
Notary Public

My Commission expires _____

ATTACHMENT A

[Description of Big Horn Coal Co. lands within current Brook Mine Permit area]

Township 57 North, Range 84 West, 6th P.M., Sheridan County, WY

Section 9: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, SE $\frac{1}{4}$ part containing 159 acres more or less, SW $\frac{1}{4}$ NE $\frac{1}{4}$ part containing 36 acres more or less, SE $\frac{1}{4}$ NE $\frac{1}{4}$ part containing 8 acres more or less, NW $\frac{1}{4}$ NE $\frac{1}{4}$ part containing 5 acres more or less

Section 10: SW $\frac{1}{4}$ part containing 73 acres more or less

Section 15: NW $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ part containing 42 acres more or less, SE $\frac{1}{4}$ part containing 88 acres more or less, SE $\frac{1}{4}$ SW $\frac{1}{4}$ part containing 4 acres more or less

Section 21: NE $\frac{1}{4}$ part containing 36 acres more or less, NW $\frac{1}{4}$ part containing 5 acres more or less

Section 22: NW $\frac{1}{4}$ part containing 59 acres more or less, NE $\frac{1}{4}$, SE $\frac{1}{4}$ part containing 61 acres more or less, SW $\frac{1}{4}$ part containing 16 acres more or less

Section 27: W $\frac{1}{2}$ NW $\frac{1}{4}$ part containing 3 acres more or less

(the "Big Horn Coal Co. Surface Lands" Exhibit 1 to Attachment A)

EXHIBIT 1 TO ATTACHMENT A

(BIG HORN COAL CO. SURFACE LANDS)

