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Department of Environmental Quality*

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

IN RE BROOK MINE APPLICATION)
) DOCKET 17-4802
TFN 6 2-025)
)

**STIPULATION REGARDING AWARD OF ATTORNEY'S FEES TO
OBJECTORS MARY BREZIK-FISHER AND DAVID FISHER**

The Department of Environmental Quality (DEQ) and Objectors Mary Brezik-Fisher and David Fisher ("Fishers"), by and through their undersigned counsel, hereby jointly submit this *Stipulation* for an Order Awarding Attorney's Fees to the Fishers. These parties have agreed to resolve the issue of attorney's fees by a stipulation which both parties find acceptable rather than through further contested case proceedings and the related expense and uncertainty involved in such proceedings.

Stipulation as to Award of Attorney's Fees

The parties to this *Stipulation* recognize Wyo. Stat. Ann. § 35-11-437(f) and the Department of Environmental Quality Rules of Practice and Procedure, Chapter 5, Section 2 provide that the Environmental Quality Council (EQC) may award attorney's fees to an objecting

person who “prevailed in whole or part, achieving at least some degree of success on the merits” in a contested case proceeding such as was held in this matter.

DEQ and the Fishers have conferred on this issue and agreed to resolve the Fishers’ potential claim for an award of attorney’s fees by agreement rather than through further adversarial proceedings before the EQC. In furtherance of this *Stipulation*, the parties hereby stipulate and agree as follows:

1. The Objectors Mary Brezik-Fisher and David Fisher were Objectors to the issuance of a permit in the above-entitled matter and those objections included contesting the adequacy of the hydrologic assessments and conclusions and the adequacy of the subsidence assessments and conclusions of the permit application;
2. The Fishers initiated or participated in the contested case proceeding under the Wyoming Environmental Quality Act as it provides for the regulation of surface coal mining and reclamation operations in accordance with P.L. 95-87;
3. The Fishers substantially contributed to a full and fair determination of the issues; and
4. The Fishers either prevailed in whole or in part, achieving at least some degree of success on the merits.

By this *Stipulation*, DEQ acknowledges that the Fishers have supplied DEQ with a detailed and itemized attorney’s fee invoice detailing the hours worked by their attorney, the hourly rate charged by their attorney, and an itemized detail of the expenses incurred. So far as the invoice demonstrates that the Fishers incurred attorney’s fees up to the amount requested to be awarded below, DEQ does not dispute that those hours expended were reasonable and at the customary commercial rate of payment for such services in the area. DEQ also does not dispute that the rate charged was reasonable given the known experience, reputation and ability of the Fishers’ attorney.

DEQ stipulates that it waives any further showing as may be required by DEQ's Rules and Regulations, by law, or by custom in relation to a request for an award of attorney's fees.

Based upon these stipulations and the agreement of the Fishers to accept a reduced amount of attorney's fees and expenses incurred, DEQ and the Fishers hereby stipulate to and request an Order from the EQC awarding the Fishers **Thirty-Five Thousand Dollars (\$35,000.00)** in attorney's fees.

Stipulation as to Payment of the Award

The parties to this *Stipulation* recognize that Brook Mining Company, LLC, has filed a petition for judicial review of the EQC's September 28, 2017 Order in these proceedings (EQC's Order). To account for the outcomes of this appeal, the parties have agreed and stipulated to the following with regard to the payment of the awarded attorney's fees:

1. DEQ shall not be required to tender any payment for the Award of Fees until after the appeal has been fully decided by the district court and the time for filing a further appeal to the Wyoming Supreme Court has expired without the filing of an appeal, or when any further appeal has been fully decided. The Resolution Date referenced below shall be the latter of the date of the deadline for filing a further appeal to the Wyoming Supreme Court, or the date that DEQ receives a final decision of the Wyoming Supreme Court fully deciding that further appeal.
2. In the event that the Order of the EQC is affirmed or upheld in whole by the final court reviewing the matter, the DEQ shall tender payment within 30 calendar days of the Resolution Date.
3. In the event that the EQC's Order is affirmed in part and/or reversed in part by the final court reviewing the matter, the parties shall confer on whether that court's final decision substantially shifts the identities of the prevailing and non-prevailing parties, and if so, whether the amount of the Award of Fees should be altered. The parties shall confer on that matter within 15 calendar days after the Resolution Date. If the parties agree that the amount of the Award of Fees does not need to be altered, the DEQ shall tender payment within 30 calendar days after the parties reach that agreement. If the parties agree to a new amount of an Award of Fees, the parties shall file a new stipulation with the Council and

DEQ shall tender payment of the new amount within a reasonable amount of time after the Council approves the stipulation. If the parties disagree, DEQ shall not be required to make any payment on the Award of Fees stipulated here, but the Fishers may file with the Council a petition for the award of attorney's fees in accordance with Chapter 5, Section 1(b) of the Department's Rules of Practice and Procedure. If the Fishers file such a petition, DEQ shall have 30 days from service within which to file an answer to the petition.

4. In the event the EQC's Order is fully reversed, the Award of Fees shall be vacated by subsequent order of the EQC and DEQ shall not be required to make any payment on the Award of Fees.
5. Any payment for an Award of Fees shall be made payable to the "Yonkee & Toner, LLP Trust Account" and delivered to 319 West Dow Street, Sheridan, Wyoming 82801.

Nothing in this *Stipulation* prohibits the Fishers from seeking an additional award of attorney's fees, costs or expenses, as may be allowed by law, that result from the appeal of the EQC's Order.

General Provisions

The State of Wyoming and DEQ do not waive sovereign immunity by entering into this *Stipulation* and retain all immunity and all defenses available to them as sovereigns under all state and federal law.

The EQC shall retain jurisdiction to enforce the terms and conditions of this *Stipulation*.

The persons signing this *Stipulation* certify that they are duly authorized to bind their respective parties to this *Stipulation*.

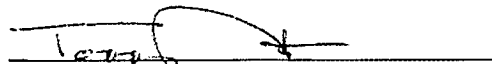
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WHEREFORE, the Fishers and DEQ hereby request that the EQC enter an Order Awarding Fees to the Fishers in the amount of \$35,000 with conditions on the payment of that award as set forth above.

DATED this 9th day of November, 2017.

WYO. DEPT. OF ENVIRONMENTAL QUALITY


YONKEE & TONER, LLP



Todd Parfitt

Director

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CERTIFICATE OF SERVICE

I, Jay A. Gilbertz, hereby certify that on the 9th day of November, 2017, I served a true and correct copy of the above and foregoing *by electronic transmission*, duly addressed as follows:

Andrew Kuhlmann
Asst. Attorney General
andrew.kuhlmann@wyo.gov

Todd Parfitt
Director, DEQ
Todd.Parfitt@wyo.gov

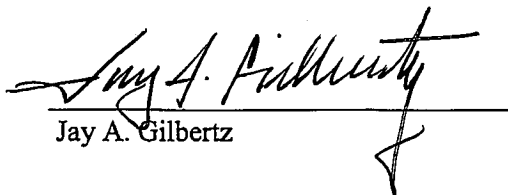
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