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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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|-----------------------------|---|--------------------|
| In re Black Hills Bentonite |) | |
| Permit to Mine No. 248C |) | |
| (Herco Amendment) |) | Docket No. 17-1601 |
| |) | |
| |) | |

PETITIONER’S OBJECTION TO SECOND CONTINUANCE OF HEARING

Petitioner Black Hills Bentonite ("Black Hills") objects to a second continuance of the hearing in this matter and as grounds therefore states as follows:

Respondents TTT Ranch Company ("TTT Ranch") and James Crossingham Jr. ("Crossingham") are attempting, once again, to hold Black Hills hostage by purposely denying BHB access to its minerals and now delaying the hearing, for a second time, in order to extract greater compensation and other concessions from Black Hills. Crossingham has made repeated demands of Black Hills to rewrite existing contracts to increase compensation and to make other concessions. Respondents' efforts to further delay access by repeated claims of "illness" is more of the same. Justice delayed is justice denied. BHB has paid TTT Ranch Company \$15,000 annually for the last five years for access to the TTT #10 Mining Claim, and now that Black Hills has filed its

application with the LQD, Crossingham has denied access to the claim. Black Hill's right to mine bentonite within the TTT #10 Claim terminates on April 30, 2020. Crossingham's efforts to delay and to deny access to Black Hills until the contract terminates is simple retaliation for Black Hill's refusal to bow to more demands for payment.

This matter was filed on September 20, 2017. TTT Ranch and Crossingham failed to respond to the Petition or enter an appearance after having been served by certified mail. *See, Return Receipt*, filed with the Council on October 17, 2017). On October 31, 2017, 41 days after receiving no response from Crossingham, Mr. Ruby sent electronic notice of the Order for Scheduling Conference set for November 14, 2017 to Respondent. *See, Certificate of Service* dated October 31, 2017 and filed Nov. 1, 2017). Crossingham then failed to appear at the initial Scheduling Conference on November 14, 2017, causing additional delay.

TTT Ranch and Crossingham finally entered an appearance, through their attorney, on November 17, 2017. Crossingham then requested that the initial hearing date of December 5 be continued due to a "scheduled medical procedure" for, coincidentally, exactly the same day as the hearing. Petitioner reluctantly stipulated to the continuance, believing that the Council would grant the continuance even over objection.

Crossingham now requests a second continuance of the hearing, arguing that a witness, Clayton McGuire, was just discharged from the hospital and cannot travel for several weeks. Respondent continues to go to extremes to delay these proceedings, and Petitioner strenuously objects to such tactics. Evidence at the hearing will show that delay has been a repeated tactic used by Respondent.

Counsel for Black Hills received a call from counsel for Crossingham on Friday, February 9 explaining that Mr. McGuire had just been discharged from the hospital after an illness. Mr. McGuire will have 13 more days to regain his health before the hearing. If he is still unable to travel he can certainly appear by telephone. And surely Mr. Crossingham can testify to the same things that Mr. McGuire would like to testify to. Mr. McGuire has been employed by TTT Ranch for 10 years. But Mr. Crossingham has owned the TTT Ranch for more than 30 years. The letters and correspondence are all to and from Mr. Crossingham, not Mr. McGuire. Mr. McGuire is included on little or no correspondence. Surely Mr. Crossingham can testify to the same things, and more, than can Mr. McGuire.

Black Hills has been mining on TTT Ranch for more than 30 years with little or no objection that Black Hills lacked access or that its mining “substantially prohibits” operations of the surface owner. Only now, after Black Hills has refused to bow to demands for higher payments and other concessions has TTT Ranch decided to complain, delay and take other extreme measures to extract concessions from Black Hills.

The TTT Ranch consists of more than 75,000 acres, which is used primarily for grazing cattle. Black Hills has 5,173 acres permitted on TTT surface. Only 535.5 acres have been impacted in some way by mining. Four hundred twenty-two (422) acres have been reclaimed. Only 47.9 acres remain to be reclaimed. The remaining 65.9 acres consist of haul roads that provide access to remote areas of the ranch and which the ranch likely will not want reclaimed. Black Hills Bentonite acquired the primary access road by exchanging more than 500 acres of land owned by Black Hills. In all the years

that Black Hills has been mining on the TTT Ranch, mining operations have impacted less than 1% of the surface of the TTT.

The Herco Amendment encompasses approximately 350 acres, but mining activities will impact less than 30 acres within that area. By no stretch of the imagination will the temporary use of 30 acres “substantially prohibit” use of the surface by Respondent TTT Ranch with its 75,000 acres. The mining will be a temporary use of 30 acres, after which those 30 acres will be reclaimed and returned to Respondent for other uses.

As stated earlier, justice delayed is justice denied. Respondent has accepted \$75,000 in payments from Petitioner to mine the TTT #10 Mining Claim, all while denying access and still threatening to terminate the contract on April 30, 2020. A second claim of illness, and a second continuance, should not be entertained by this Council. Petitioner has been the victim of repeated delay tactics for well over a year in this matter and strenuously objects to a second continuance.

RESPECTULLY SUBMITTED this 12th day of February, 2018.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he provided a copy of the foregoing by email and regular, U.S. first class mail to the following on the 12th day of February, 2018, addressed as follows:

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