

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW

934 N. MAIN ST. SHERIDAN, WY 82801 (307) 672-5809 FAX (307) 672-5800
 INFO@POWDERRIVERBASIN.ORG WWW.POWDERRIVERBASIN.ORG

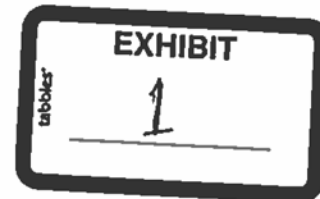


POWDER RIVER BASIN
Resource Council

Via priority mail

October 2, 2018

Kyle Wendtland, Administrator
 Land Quality Division of the Department of Environmental Quality
 200 W. 17th Street, Suite 10
 Cheyenne, WY 82002



RE: Objections to the proposed Contura Coal West, LLC - PT0214 Coal Permit Renewal Application

Dear Mr. Wendtland,

On behalf of the Powder River Basin Resource Council (“Resource Council”) and its members, we hereby file the following objections to the proposed renewal of mining permit PT214 for the Belle Ayr Mine, currently held by Contura Coal West, a subsidiary of Contura Energy (collectively “Contura”). As discussed below, the Resource Council has significant concerns and objections to the bond instruments for the permit. Contura has not met its requirements under the Wyoming Environmental Quality Act (“WEQA”) and its implementing regulations related to financial assurance requirements and the permit should not be renewed until such requirements are met.

Pursuant to W.S. § 35-11-406(k), the Resource Council requests an informal conference with the Director to discuss our objections and hopefully resolve them to the benefit of our members, the company, and the Department. With the company’s recent sale of the mine to Blackjewel, its planned re-merger with Alpha Natural Resources, and other complicating factors, this renewal permit present issues of first impression for our organization, the public, and the Department. We believe these issues would be well suited to be addressed in an informal conference with the Director.

Organizational Interest in the Permit Renewal

The Resource Council is a member-based organization that has worked to address the impacts of coal mining on people and the environment since our founding in 1973. Our core membership lives in the Powder River Basin and many of our members work, live, and recreate near the coal mines of the area. We have members who live near and regularly travel by the Belle Ayr Mine. These members suffer legally cognizable injury from the mine, including aesthetic injury and impact to quality of life and recreational opportunities. The renewal of this permit will prolong this harm. We are therefore an “interested person” within the meaning of W.S. § 35-11-406(k).

Objections and Concerns

The standard of review for a permit renewal is:

Any valid surface coal mining permit issued pursuant to this act is entitled to a right of successive renewal upon expiration with respect to areas within the boundary of the existing permit if public notice has been given, any additional revised or updated information has been provided and the operation is in compliance with applicable laws and regulations and if the renewal requested will not substantially jeopardize the operator's responsibility on existing affected land.

W.S. § 35-11-405(e) (emphasis added).¹

One of the main requirements of the WEQA is adequate reclamation bonding to cover the full cost of third-party reclamation should a company default on its obligations at any time during the life of the mine.² The WEQA's implementing regulations specifically provide that an application for a renewal of a mine permit requires "Evidence that the bond and a liability insurance policy will be provided." Wyoming Coal Rules and Regulations Chapter 12 § 1(b)(i)(C).

After careful review of Contura's financial assurance instruments, we have concerns and objections to the continued use of its real property collateral bond. We also have objections to the continued nondisclosure of information related to this real property collateral bond. Finally, we are concerned about the continued reliance on Contura's real property bond since Blackjewel is the operator of the mine and Contura is re-merging with Alpha Natural Resources.

1. Objections to Contura's Real Property Collateral Bond

Since the time it took over as the permit holder for the Belle Ayr Mine, Contura has guaranteed its reclamation work partly through a real property collateral bond. The property covers \$26,749,000 of the company's \$119,090,000 reclamation bond, or about 22% of the bond amount for the mine.³

According to current Department rules:

The property shall be valued at the difference between the fair market value and any reasonable expense anticipated by the Department in selling the property. The fair market value shall be determined by an appraiser or appraisers proposed by the operator. The appraiser or appraisers shall be selected by the Administrator. The Administrator has the option to reject any appraiser proposed by the operator.

¹ It is clear from the language in SMCRA that Congress intended an affirmative finding that the operation is in compliance a necessary component of permit renewals. See 30 U.S.C. § 1256(d); 30 C.F.R. § 744.15 (permits carry a right of successive renewal unless findings are made that the operator is in noncompliance with the environmental protection standards of the Act or that the terms and conditions of the permit are not being satisfactorily met).

² See Wyoming Coal Rules & Regulations Chapter 12 § 2.

³ This information is current as of June 30, 2018.

Unfortunately, as discussed below, the appraisal report for this piece of property is being held as confidential by the Department and we are unable to review it. Nevertheless, even without reviewing the appraisal report, we can raise valid concerns about the amount of the real property bond.

First, we have compared the property amount – almost \$27 million – with property for sale in Crook, Weston, Campbell, and Sheridan counties. As the attached documents show, we find it highly unlikely that Contura would own a ranch worth \$27 million. For instance, the attached brochure for the Holy Cow Ranch in Sheridan County details that this large acreage, prime agricultural and recreational area ranch, is about \$3 million less than Contura's. The Holy Cow Ranch borders the Bighorn National Forest, has water rights in place for irrigation and a sizeable cow/calf operation, and has modern buildings including a 6,300 square foot residence and a lodge. We cannot imagine Contura's property has similar attributes.

Larger acreage ranches in Crook, Weston, and Campbell Counties are valued at under \$20 million, if not mostly under \$10 million. Based on this information, we find it difficult to believe that Contura could own a ranch that is valued at what they say it is.

Additionally, we do not believe that Contura has updated its appraisal since the original submission, and we have reason to believe that the appraisal was not updated for the annual report nor was it updated for this renewal application. At the very least, an updated appraisal should be required before the permit can be renewed.

2. Objections to Lack of Public Disclosure of the Appraisal Report

As part of our objections related to Contura's original bonding proposal when it obtained the permits from Alpha Natural Resources, we submitted a public records request for all appraisal reports and correspondence related to the company's collateral bonds. The Department withheld the appraisal reports as confidential. The appraisal report is also not a part of the public file on the permit renewal application. It is therefore impossible for us to comment on whether the appraisal requirements are properly being met, and we object to the lack of public information and denial of public participation opportunities stemming from the lack of disclosure. We contend withholding this information violates the WEQA's requirements under Section 1101(a) (Unless the information would "divulge trade secrets" "[a]ny records, reports or information obtained under this act or the rules, regulations and standards promulgated hereunder are available to the public.").

3. Questions and Concerns about the Future of Contura

Almost a year ago, in announcing the sale of the Belle Ayr and Eagle Butte Mines to Blackjewel, Contura stated: "Blackjewel L.L.C. will assume all permit and reclamation obligations associated with the assets acquired."⁴ In its 2017 audited financial statement, Contura

⁴ <https://conturaenergy.com/news/contura-subsiidiaries-sell-powder-river-basin-assets/> (attached)


similarly reported: “The transfer of mining permits to the Buyer is estimated to be completed in the first half of 2018” and that “Per the terms of the asset purchase agreement, as promptly as practicable after closing, the Buyer shall use its best efforts to replace the Company’s reclamation performance bonds and collateral bonds relating to the purchased permits.”⁵ Contura has since announced it plans to re-merge with Alpha Natural Resources.

In spite of this “promptly as practicable” language, to our knowledge, the permit transfer application has not proceeded to public notice and comment. We remain very concerned about the future of the Belle Ayr Mine. While we reserve the right to further comment and object to Blackjewel’s operation of the mine if and when the permit transfer goes to public notice, for the purposes of this renewal application, the uncertain situation further underscores the need for the Department to heavily scrutinize the adequacy of Contura’s reclamation bonds. Importantly, Blackjewel has proposed to retain the real property collateral bond posted by Contura as part of its bonding package for the Belle Ayr Mine (see attached). We have questions and concerns related to Blackjewel’s use of Contura’s real property – questions and concerns we hope to have addressed through an informal conference.⁶ These questions and concerns include:

- 1) Will Blackjewel obtain ownership of the real property or will Contura hold it indefinitely to meet Blackjewel’s reclamation bond requirements?
- 2) Have Blackjewel and Contura amended the terms of their sale agreement to allow Blackjewel to use the real property collateral bond (noting that the sale agreement quoted above required replacement of Contura’s collateral bond)?
- 3) Has Blackjewel conducted an appraisal of the property?
- 4) Has Contura told the Department what will happen to the property when Contura re-merges with Alpha?

Thank you for your time and consideration of these objections. We look forward to your scheduling of an information conference to discuss these objections and your responses.

Sincerely,



Shannon Anderson
Staff Attorney

⁵ See attached.

⁶ We reserve the right to raise similar questions and objections on the permit transfer once it goes to public notice.