



4. After electronic mail correspondence between Mr. Wendtland and Shannon Anderson regarding public participation rights related to coal mine permit renewals, a second letter was sent to the Resource Council by Mr. Wendtland and also signed by Todd Parfitt, DEQ Director. The letter, dated October 23, 2018, denied the Resource Council's request for an informal conference to hear objections to the permit renewal. A copy of this letter is attached as Exhibit 3.

### **STATEMENT OF JURISDICTION**

5. Since the DEQ denied the request for an informal conference, the EQC must now hold a hearing on the objections.

6. A hearing must be held because Chapter 12 of the DEQ's Coal Rules and Regulations provide: "All procedural requirements of the Act and the regulations relating to review, public participation, and approval or disapproval of permit applications, and permit term and conditions shall, unless otherwise provided, apply to permit revisions, amendments, renewals and permit transfer, assignment or sale of permit rights."

7. This means that Section 406 of the WEQA applying to approval and disapproval of permit applications governs the public participation and procedural requirements related to the renewal of the permit, including Section 406(k)'s public participation process and 406(p)'s decision-making process.

8. Section 406(k) provides that an informal conference or a public hearing shall be held if written objections to the application are timely filed, as they have been here.

9. This petition is timely filed within thirty (30) days of receipt of DEQ's October 23, 2018 decision denying the request for an informal conference. DEQ Rules of Practice & Procedure Ch. 1 §§ 8(a)-(b); Ch. 2 § 4.

## STATEMENT OF FACTS AND LAW

10. Requirements for coal mine permit renewals, as well as grounds for approval and denial are governed by Section 405(e) of the Wyoming Environmental Quality Act (“WEQA”) and associated regulations found in Chapter 12 of the DEQ’s Coal Rules and Regulations.

11. Section 405(e) provides:

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.

12. As such, in order to renew the permit, DEQ must affirmatively find that the “operation is in compliance with applicable laws and regulations.”

13. One of the main requirements of the WEQA for coal mine operations is adequate bonding to cover the full cost of third-party reclamation work should a company default on its obligations at any time during the life of the mine. *See* DEQ Coal Rules & Regulations Ch. 12 § 2.

14. The DEQ’s 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.” DEQ Coal Rules and Regulations Ch. 12 § 1(b)(i)(C).

15. In the case of Contura’s permit for the Belle Ayr Mine, \$26,749,000 of the company’s \$119,090,000 reclamation bond (about 22% of the bond amount for the mine) is guaranteed through a real property collateral bond. Exhibit 4.

16. According to DEQ rules, in order to guarantee reclamation work through a real property collateral bond, an appraisal “selected by the Administrator” must be conducted. The appraisal is used to value the property for purposes of the bond, which is set at “the difference

between the fair market value and any reasonable expense anticipated by the Department in selling the property.”

17. An appraisal was conducted by Robert J. Brockman on July 7, 2017. Exhibit 2, pg. 1. While the appraisal was “recertified” on July 18, 2018, neither the fair market value nor the bond amount was updated. Id.

18. The appraisal is being held as confidential by DEQ. Exhibit 2, pg. 2. As such, the appraisal was not available for public inspection and review as part of the public participation opportunities for the permit renewal. It is therefore impossible for the Resource Council – or any other interested party – to meaningfully participate and comment on the permit renewal.

19. While it was not able to comment on the appraisal, in support of its objections, the Resource Council conducted a review of comparable parcels and land available for sale in Sheridan, Crook, Weston, and Campbell Counties. This review concluded that it would be unlikely that the property is valued at the amount as represented by Contura. Exhibit 1, pg. 3 and associated attachments.

20. Since submitting its objections, the Resource Council has searched the Campbell County Assessor’s office website to obtain information on property owned by Contura. Contura owns two parcels of land in Campbell County – Parcel 10871 and Parcel 12498. Parcel 10871 is a 32,611 acre parcel with no improvements and a market land value of \$1,809,122. Exhibit 5. Parcel 12498 is a 17,390 acre parcel with improvements valued at \$535,005 and land valued at \$1,289,096. Exhibit 6. Together, the market value for these parcels is \$3,633,223 – far below the approximately \$27 million from the appraisal.

21. These parcels are included in Contura’s “Exhibit A to Mortgage,” provided to the DEQ for Bond No. CBC-001, attached as Exhibit 7. While additional surface land and mineral

acres are also included, it is unclear how they could make up the over \$20 million difference between the County's estimated market value for the two large parcels and the bond amount.

22. Additionally, Resource Council staff member Robin Bagley physically visited the Campbell County Clerk's Office and was unable to find any filed lien or mortgage on the properties listed in Contura's "Exhibit A." Declaration of Robin Bagley ¶¶ 7-9, attached as Exhibit 8. While it could be that a lien or mortgage on behalf of the state is filed in another county, Campbell County does not have records. *Id.* at ¶ 10. This likely means the state is unprotected and the bond may not meet requirements of DEQ's regulations. DEQ Coal Rules & Regulations Ch. 11 § 1(b)(i), requiring "A perfected, first lien security interest in real property located within the State of Wyoming, in favor of the Wyoming Department of Environmental Quality."

#### **ISSUES PRESENTED FOR REVIEW AT THE HEARING**

23. Paragraphs 1-23 above are hereby incorporated.

24. DEQ cannot lawfully renew the permit for the Belle Ayr Mine unless the application demonstrates that the coal mine operation is in compliance with all applicable laws and regulations, including compliance with reclamation bond requirements. The agency has failed to do so in this case and cannot do so until the appraisal is provided to the public.

25. The WEQA requires that 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." W.S. § 35-11-1101(a). DEQ cannot lawfully withhold the appraisal report – or at the very least it has an obligation to make available a redacted version of the report to the public.

26. The Resource Council reserves the right to raise any additional issues brought forth in its objection letter submitted to DEQ, and reserves the right to supplement its objections and grounds for hearing based on discovery provided by DEQ and Contura as part of this hearing process.

27. The Resource Council also reserves the right to provide additional evidence and support for its objections.

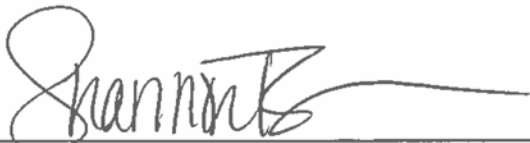
### **PRAYER FOR RELIEF**

28. For the reasons set forth above, the EQC should schedule and hold a hearing on the Resource Council's objections.

29. After the hearing, the EQC should deny the renewal of the Belle Ayr coal mine permit and should submit that decision to DEQ for its action under 406(p) of the WEQA.

30. The EQC should also require the DEQ to publicly disclose the appraisal and make it available for public inspection under the WEQA and the Wyoming Public Records Act.

Respectfully submitted this 16<sup>th</sup> day of November, 2018.



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 10<sup>th</sup> day of November, 2018, the foregoing PETITION was served on the following parties via USPS registered mail, return receipt requested.


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