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ATTORNEYS FOR CONTURA COAL WEST, LLC

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

IN THE MATTER OF PERMIT RENEWAL) OAH DOCKET NO. 19-004-220
APPLICATION OF) C103
CONTURA COAL WEST, LLC.: P20214;) DOCKET NO. DEQ/EQC 18-4803
)
AND IN THE MATTER OF THE)
APPLICATIONS FOR COAL MINE PERMIT)
TRANSFERS OF)
BLACKJEWEL, LLC.: PT0214 & PT0428) DOCKET NO. DEQ/EQC 18-4805

CONTURA COAL WEST, LLC’S DISCLOSURE STATEMENT

Pursuant to the Council’s Order on Schedule and Chapter 2 § 18 of the Rules of Practice and Procedure, Contura Coal West, LLC (Contura), submits its Disclosure Statement for the upcoming May 15-16, 2019 hearing.

COMPLETE WITNESS LIST

Contura will call John Sherman, MAI, Consultants in Real Estate. Mr. Sherman can be contacted through undersigned counsel. Mr. Sherman will testify regarding his experience and expertise as a real estate appraiser and his expert opinions regarding the scope of conducting and reviewing appraisals relating to commercial real estate and right of way projects, as well as consulting services regarding real estate values. Mr. Sherman will testify as to his education, experience and qualifications, as summarized in his curriculum vitae. Mr. Sherman will testify

regarding his review and opinions relating to the Uniform Agricultural Appraisal Report and Supplement completed by Robert J. Brockman. Mr. Sherman will provide opinions that Mr. Brockman's appraisal is consistent with appraisal industry standards and the method of appraisal supports the conclusions reached by Mr. Brockman. Based on his expertise, Mr. Sherman will testify about the specifics of Mr. Brockman's report, the property appraised, the methods used to appraise the property, the industry standards governing appraisals, and the conclusions Mr. Brockman reached. Mr. Sherman will also testify consistent with his opinions and conclusions in his expert report.

Contura may call John Paul Jones, Senior Vice President – Environmental for Contura Coal West, LLC. Mr. Jones can be contacted through undersigned counsel. If called, Mr. Jones may testify about Contura's efforts to renew its permit for the Belle Ayr Mine and transfer that same permit to Blackjewel, LLC (Blackjewel) along with the permit for the Eagle Butte Mine. He may discuss the basics of the sale of Contura's assets to Blackjewel. He may testify about the specifics of each application and the information supporting those applications. He may testify about the original appraisal and Contura's role in having that appraisal conducted.

Both Mr. Sherman and Mr. Jones may rebut any testimony from other witnesses. Contura reserves the right to call any witness identified by another party or any additional impeachment or rebuttal witnesses.

SPECIFIC CLAIMS, DEFENSES, AND ISSUES

This case is about whether DEQ should renew Contura's permit for the Belle Ayr Mine and transfer the same permit and the permit for the Eagle Butte Mine to Blackjewel. Based on all the documents filed and the applicable law, the specific issues related to the permit renewal and permits transfers are as follows:

- Is the real estate used as collateral for approximately \$26 million of the reclamation bond for the Belle Ayr Mine worth approximately \$26 million?
- Does the appraisal used by DEQ meet the requirements for using real estate as collateral for self-bonding?
- Is Blackjewel eligible to receive permits under Wyoming law because it has conditional violations listed on the most recently performed Applicant Violator System (AVS) report?

While PRBRC has raised several other arguments, they are all subsets of these issues.

Originally, PRBRC raised issues related to disclosure of certain documents under Wyoming's Public Records Act. PRBRC moved to dismiss those claims and filed an Amended Objection on February 21, 2019. The Council has yet to act on that motion. Based on PRBRC's filing, the issues related to the Public Records Act are no longer applicable to this case. Further, PRBRC has filed a case in First Judicial District Court to address its Public Records Act concerns, making those issues moot for the upcoming hearing.

Should the Council believe the public record request issues remain a part of the case, Contura will address them at the Prehearing Conference.

BURDEN OF PROOF

For the transfer applications, Contura and Blackjewel bear the burden of proving that the Director should grant those applications. Wyo. Stat. Ann. § 35-11-406(n). For the renewal application, the burden of proof is less clear. DEQ granted Contura's renewal application but did so without holding an informal conference or a public hearing. As a result, DEQ has treated the PRBRC's objections as an appeal of the Director's decision. Under this view of the proceedings,

PRBRC bears the burden of proving the Director made an unlawful decision. *See Knight v. Env'tl. Quality Council*, 805 P.2d 268, 273 (Wyo. 1991). PRBRC views this hearing as the public hearing under Section 35-11-406(k). Under this view of the proceedings, Contura would bear the burden of proving the Director should approve its permit renewal. *See Wyo. Stat. Ann. § 35-11-406(n)*.

The Council should treat the objections to Contura's permit renewal as an appeal from the Director's decision, placing the burden of proof on PRBRC. The undisputed facts show the Director renewed Contura's permit. PRBRC has not argued in its objections that the Director could not renew the permit. Still, it is a largely meaningless distinction because PRBRC has objected to the permit transfers for the same reason it objects to the renewal. Contura will prove the Director should grant the application to transfer the permits, which will also prove the Director's decision to renew the Belle Ayr permit was appropriate.

STIPULATED FACTS

The parties have not stipulated to any facts. But based on PRBRC's objections, it appears PRBRC contests only facts related to the appraisal supporting real estate used as collateral and the AVS reports. The Council can and should treat all other factual issues as undisputed.

EXHIBITS

The exhibits Contura intends to introduce at the hearing are listed on the table below:

Ex. No.	DESCRIPTION
CCW 1	2017/07/07 Uniform Agricultural Appraisal Report (CCW 0001-80)
CCW 2	2019/03/21 Supplement to July 7, 2017 Appraisal Report (CCW 0081-88)
CCW 3	2018/01/18 Blackjewel Letter to DEQ (CCW 0089)
CCW 4	2018/08/29 Bond Acceptance - Belle Ayr (CCW 0090-91)
CCW 5	2018/08/29 Bond Acceptance - Eagle Butte (CCW 0092-93)
CCW 6	2018/10/03 AVS Report (CCW 0094-97)
CCW 7	2019/01/28 AVS Report (CCW 0098-102)
CCW 8	2018/10/05 DEQ Letter-Belle Ayr Technically Complete (CCW 0103-04)
CCW 9	2018/10/05 DEQ Letter-Eagle Butte Technically Complete (CCW 0105-06)

Contura also designates any admitted exhibits from other parties. Contura reserves the right to designate additional exhibits, necessary for impeachment or rebuttal.

TIME FOR HEARING

Contura estimates that it will take two to three hours to present its case. Based on the other parties' witness and exhibit lists, Contura estimates it will take a day and a half to two days to complete the hearing.

DATED: May 8, 2019.

/s/ Jeffrey S. Pope

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ATTORNEYS FOR

CONTURA COAL WEST, LLC

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2019, I served the foregoing by placing a true and correct copy via E-mail to the following:

Wyoming Environmental Quality
Council - (ORIGINAL)
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