
BLACKJEWEL

21 June 2019

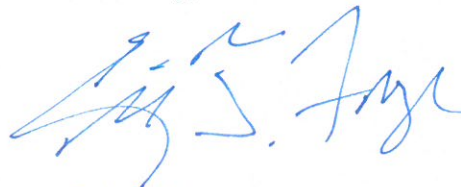
Wyoming Department of Environmental Quality Council
Attn: Joe Girardin
2300 Capitol Avenue
Hathaway Building, Room 136
Cheyenne, Wyoming 82002

RE: Proposed Findings of Fact and Conclusions of Law
In re: Application of Contura Coal West and Blackjewel L.L.C.
Docket No.: 18-4803, Consolidated with 18-4805

Dear Wyoming Department of Environmental Quality Council:

Enclosed, please the original Proposed Findings of Fact and Conclusions of Law submitted on behalf of Blackjewel L.L.C. in the above-referenced matter. I appreciate you placing this in you regular files. Please note that the same has been electronically filed and all counsel of record has been copied on this correspondence.

Sincerely,



Eric T. Frye
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Blackjewel L.L.C.
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ETF

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**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)	CONSOLIDATED WITH 18-4805
APPLICATIONS FOR COAL MINE)	
PERMIT TRANSFERS OF BLACKJEWEL)	
L.L.C.: PT0214 & PT0428)	

**BLACKJEWEL L.L.C.'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Blackjewel L.L.C., pursuant to the Hearing Examiner's May 16, 2019 Order and the Rules of the Wyoming Department of Environmental Quality Practice and Procedure submits the following proposed findings of fact and conclusions of law:

I. INTRODUCTION

This matter was brought before the Environmental Quality Council by hearing on May 15 and May 16, 2019 wherein all interested parties presented live testimony as well as documentary exhibits. The order of presentment and witnesses presented are as follows: Department of Environmental Quality ("DEQ"), Kyle Wendtland; Powder River Basin Resource Council ("PRBRC"), Vanessa Romero, Mark Rogaczewski, Casey Robb; Blackjewel L.L.C. ("Blackjewel"), Mark Thrall, Robert Brockman; and Contura Coal West ("Contura"), John Sherman. Following the presentment of the evidence and each interested party closing their case

in chief, the Council deliberated briefly and ultimately requested that the parties present proposed Findings of Fact and Conclusions of law no later than the 21st day of June 2019.

Thereafter receiving the proposed findings of fact and conclusions of law, the Council finds that 1.) the DEQ's approval of Contura Coal West's permit renewal from October 23, 2018 was appropriate and the land collateral for the reclamation bond is sufficient for its purpose; and 2.) the Permits at issue for the Eagle Butte and Belle Ayr Mines currently in the name of Contura Coal West should be transferred to Blackjewel L.L.C.

II. FINDINGS OF FACT

1. Kyle J. Wendtland, the administrator of the Land Quality Division for the DEQ is qualified by education, training and experience to process coal permit applications, including permit transfer applications, and to sign and approve those permits or recommend to the director approval or denial of those permits. *Contura Coal West – Vol I* at PP. 38-39.
2. The DEQ received a permit renewal application from Contura Coal West prior to October 23, 2018. *Id.* at P. 57.
3. Included in that permit renewal application from Contura Coal West was a request for real property, to wit, two ranches near the Belle Ayr Mine, to stand for a portion of the reclamation bond associated with the Belle Ayr Mine. *Id.* at P. 57.
4. On May 2, 2017, Robert Brockman, a licensed appraiser in the State of Wyoming, was approved by the DEQ to perform an appraisal of the ranches to determine the value related to the ranches. *Id.* at P 50, ¶¶ 12-14 and P. 52, ¶¶ 6-9.
5. Mr. Brockman completed his first appraisal of the two ranches and a recertification of his first appraisal prior to October 23, 2018. *Id.* at P. 53.
6. The DEQ accepted Mr. Brockman's appraisal of the two ranches. *Id.* at P. 55, ¶¶ 5-21.

7. The DEQ determined that the value associated with the two ranches was sufficient to meet the reclamation bond requirements consistent with Wyoming law. *Id.* at P. 44.
8. On August 24, 2016, a mortgage was recorded with the Clerk of Campbell County Wyoming, providing the DEQ a perfected first lien on the ranches which were appraised by Mr. Brockman. *Id.* at PP 43-44.
9. The Mortgage bound the “. . . Mortgager . . . its successors and assigns to warrant and forever defend the title to the Mortgaged Property unto the Department for so long as any of the obligations remain outstanding.” *Id.* at P. 46.
10. Following the October 23, 2018 permit renewal, the DEQ received permit transfer applications from Blackjewel L.L.C. *Id.* at P. 64-65.
11. Blackjewel submitted every necessary document to grant the renewal of the permit and the transfer of the permit. *Id.* at P. 66, ¶¶ 8-11.
12. As part of the DEQ’s review of whether the permit transfer could be complete, it investigated Blackjewel to determine whether they were qualified and could appropriately be permitted to be an operator in Wyoming. *See Id.* at P. 66, ¶¶ 12-24.
13. The DEQ reviewed the Applicant Violator System, which is a national database that is supplied by the Office of Surface Mining which can be used to determine whether an operator has a pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct. *Id.* at 67-69.
14. The Applicant Violator System check pulls up not only the entity checked but also entities which may be under the same ownership or control. *Id.* at P. 68.

15. If the Applicant Violator System shows a violation as “Conditional” that means that some abatement has occurred for a violation and that the applicant is eligible for a permit. *Id.* at 70-71.
16. Reckless, knowing or intentional conduct is a very high bar which would be indicated by violations listed on the Applicant Violator System which are outstanding and do not move to conditional. *Id.* at P. 86-87.
17. Neither Blackjewel nor Contura had any violations in the State of Wyoming since they have been doing business here. *Id.* at P. 87, ¶¶ 8-11.
18. Both Contura and Blackjewel are responsible operators. *Id.* at P. 87, ¶¶ 12-14.
19. The DEQ and Kyle Wendtland made the appropriate determination during the investigation of Blackjewel that they are appropriate to be an operator in the State of Wyoming and that there is nothing in its history which could tend to lead to the conclusion that Blackjewel has a pattern of willful violations causing irreparable harm to the environment. *Id.* at P. 87, ¶¶ 15-23.
20. The DEQ appropriately determined that all three applications met the applicable statutory and regulatory requirements. *Id.* at P. 92, ¶¶ 11-20.
21. The DEQ recommended that the permit renewal be affirmed by this Council. *Id.* at P. 92, ¶¶ 21-23.
22. The DEQ recommended that the permit transfer be granted by this Council. *Id.* at P. 92, ¶¶ 21-23.

III. CONCLUSIONS OF LAW

1. Wyoming Statute Annotated 35-11-406 assigns the requirements for Applications for mining permits generally.

2. The Wyoming Statute Annotated §35-11-406 mirrors the Surface Mine Control and Reclamation Act (“SMCRA”) 30 U.S.C. 1201, *et. seq.*
3. A system which has been called the Applicant Violator System (“AVS”) was created to assist the OSMRE and States making permit eligibility determinations consistent with section 510(c) of SMCRA and in this instance §35-11-406(o). See e.g. 30 U.S.C. §1259.
4. The primary purpose of the AVS is to assist the OSMRE and States in making permit eligibility determinations required under section 510(c) of SMCRA for applicants of surface coal mining permits. See e.g. 30 U.S.C. §1259.
5. The AVS satisfies the requirements found at section 510(c) of SMCRA and §35-11-406(o) of the Wyoming Statute Annotated when an operator who applies for a permit or a permit transfer has any violations listed as “conditional.”
6. If an operator has violations which are listed as “conditional” then they have either abated or corrected to the satisfaction of the agency with jurisdiction over the violation each violation so listed. See e.g. 30 U.S.C. §1259 and §35-11-406(o)
7. If a violation is moved from “outstanding” to “conditional” then the operator has abated or corrected the violation and it is proof that the operator has not engaged in a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.
8. The permit renewal application as submitted by Contura on October 23, 2018 was complete and met all statutory requirements.

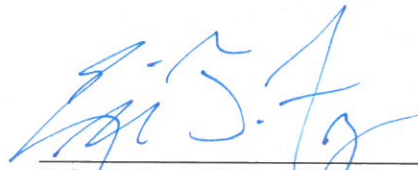
9. The land appraisal which was completed for a portion of the reclamation bond for the Contura permit renewal was approved by the DEQ and conducted by a certified and extremely qualified land appraiser in the State of Wyoming.
10. The two ranches which have been mortgaged for a portion of the reclamation bond are sufficient to stand for this purpose.
11. Contura's Permit Renewal request, which was accepted by the DEQ shall be affirmed and the permit renewal accepted.
12. The permit transfer application as submitted by Blackjewel was complete and met all statutory requirements.
13. The DEQ conducted a thorough and appropriate investigation into whether Blackjewel should be an operator in the State of Wyoming.
14. 35-11-406(o) requires that "No permit shall be issued to an applicant after a finding by the director or council, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct."
15. The evidence, as submitted at hearing, is that Blackjewel is a responsible operator and that in the previous eighteen (18) months operating in Wyoming, has had zero (0) environmental violations issued to it.
16. Further, the evidence at hearing is that the few environmental violations which Blackjewel or another entity associated with it through the Applicant Violator System did receive were listed as "Conditional" and by being listed as "Conditional" there can

be no finding that Blackjewel is an operator that has demonstrated a “pattern of willful violations of such nature and duration with such resulting irreparable harm to the environment as to indicate reckless, knowing or intentional conduct.”

WHEREFORE for the foregoing reasons, it is the decision and ORDER of this Honorable Tribunal to AFFIRM the permit renewal application submitted by Contura Coal West and Approved by the DEQ. In addition, it is the decision and ORDER of this Honorable Tribunal to GRANT the permit transfer application filed by Blackjewel L.L.C.

Respectfully Submitted,
Blackjewel L.L.C.
By Counsel,

DATED this 21st day of June 2019.



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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June 2019, I served the foregoing by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed to the following:

Wyoming Department of Environmental Quality Council – (ORIGINAL)
Attn: Joe Girardin
2300 Capitol Avenue
Hathaway Building, Room 136
Cheyenne, Wyoming 82002

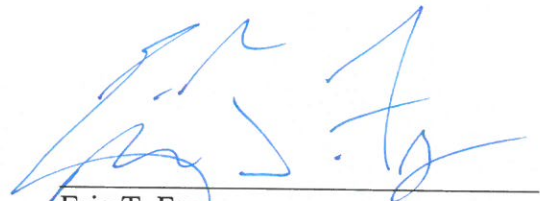
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