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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

)	
In re Applications for Coal Mine Permit)	
Transfers – PT0214 & PT0428)	EQC Docket No. 18-4805 ¹
Blackjewel, LLC)	
)	

**POWDER RIVER BASIN RESOURCE COUNCIL’S REPLY TO OTHER PARTIES’
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to the Environmental Quality Council’s (“Council” or “EQC”) order at the end of the May 15-16, 2019 hearing, the Powder River Basin Resource Council (“Resource Council” or “PRBRC”) hereby files its reply to the Proposed Findings of Fact and Conclusions of Law submitted by Blackjewel, LLC, Contura Coal West, and the Department of Environmental Quality (combined “other parties” or individually “Blackjewel” “Contura” and “DEQ”) in the above captioned proceedings.

To the extent that PRBRC’s proposed Findings of Fact and Conclusions of Law directly conflict with the proposed findings and conclusions of the other parties, no reply is necessary, and PRBRC’s findings and conclusions speak for themselves. PRBRC continues to urge the adoption of its proposed findings and conclusions.

However, included below are specific objections to proposed findings and conclusions of other parties designed to assist the EQC in its decision-making process.²

¹ Following the EQC’s decision at its hearing, EQC Docket No. 18-4803 is no longer consolidated with this docket.

Objection to Specific Findings and Conclusions³

Contura Conclusions of Law Paragraphs 1, 4, 10-15, 32, & 57

Contura misstates the role of the EQC and misreads the statutory requirements for the standard of review and scope of decision after a 406(k) contested case hearing. Contura's interpretation belittles the EQC's authority and dwarfs it to a mere advisory role – a result that is inconsistent with the Environmental Quality Act's requirements and past precedent of the EQC.

Section 406(p) governs this proceeding and requires the EQC to make a “decision on the application.” The specific authority of section 406(p) is controlling for mining permits, but it is also consistent with the EQC's general authority in section 112(c)(ii) of the Environmental Quality Act, which provides that the EQC may “order that any permit . . . be granted, denied, suspended, revoked, or modified.”

The EQC has correctly applied the appropriate standard of review in previous hearings (see, e.g. *Brook Mining, LLC*,⁴ *Amax Coal Co./Eagle Butte Mine*,⁵ *Fort Union Mine Partners*,⁶ etc.) and must do so here as well.

DEQ Conclusions of Law Paragraph 1-2

DEQ is incorrect in applying section 406(m) to this proceeding. Section 406(m) applies to mining permits “other than a surface coal mining permit.” The Eagle Butte and Belle Ayr Mines are “surface coal mining permit[s]” and as such, section 406(n) and the other associated

² No proposed finding or conclusion of another party is deemed admitted for the purposes of this hearing simply because PRBRC does not specifically reply to it.

³ Blackjewel's proposed findings and conclusions were not as specific as Contura's and DEQ's and do not warrant a reply. To the extent that Blackjewel's proposed findings and conclusions are covered by Contura's and DEQ's, please consider objections to Contura's and DEQ's findings and conclusions to also be objections to Blackjewel's proposed findings and conclusions.

⁴ <https://eqc.wyo.gov/Public/ViewPublicDocument.aspx?DocumentId=14424>

⁵ <https://eqc.wyo.gov/Public/ViewPublicDocument.aspx?DocumentId=8206>

⁶ <https://eqc.wyo.gov/Public/ViewPublicDocument.aspx?DocumentId=8400>

portions of the Environmental Quality Act and its regulations governing surface coal mining permits apply to this proceeding.

Contura Findings of Fact Paragraph 17, Contura Conclusions of Law Paragraph 40

Contura cannot rely upon a yet to be completed and submitted revised appraisal. Any findings or conclusions stemming from the “new appraisal” cannot be made because any “new appraisal” is not evidence in this proceeding.

Contura Findings of Fact Paragraph 19 and 22, Contura Conclusions of Law Paragraph 41

Contura asserts that “any mineral rights that Contura holds in those lands” are included in the mortgage rights of the DEQ. However, as discussed at the hearing, and set forward in PRBRC’s proposed findings and conclusions, neither Contura nor Blackjewel provided title evidence of mineral ownership. The companies also did not provide title evidence that demonstrates an absence of encumbrances to the property stemming from mineral leases, surface use and damage agreements, or other mineral access contracts or agreements. Additionally, mineral ownership and surface use and damage agreements were not reviewed in the appraisal process. As such, it is impossible for DEQ to determine whether the property is “free and clear” of all encumbrances as required by the regulations.

Contura Findings of Fact Paragraph 27

Contura asserts that the contingency amount for “unknown costs” in the bond amount is sufficient to determine and calculate the “anticipated expense” DEQ would incur in selling the property. However, the rules require a specific calculation of “anticipated expense,” and DEQ cannot rely on the more general bond contingency amount. Additionally “unknown” and “anticipated” are opposite terms and do not have the same plain meaning. *See* PRBRC proposed findings and conclusions at ¶¶ 25-30, 40-43.

Contura Conclusions of Law Paragraphs 45-52, DEQ Conclusions of Law Paragraphs 14 & 20

Contura and DEQ contend that the AVS report supplements or amends the information contained in the permit application, in order to meet the requirements of the law and regulation related to the violation history of Blackjewel and companies under common ownership and control. However, the AVS requirements are separate from and in addition to the permit application requirements. The permit transfer applications did not contain a full schedule of violations with explanatory information as required by the Environmental Quality Act and the coal regulations. *See* PRBRC proposed findings and conclusions at ¶¶ 50, 55-56, 81-83; *see also* DEQ proposed conclusion of law ¶ 16 (describing that “until the applicant submits proof” of the violation status, a permit “shall not be issued”).

This difference in information contained within the permit application versus the AVS report is not merely “form over substance” as Contura contends. The level of information required by the permit application is more descriptive than the AVS report and as such the difference is especially important as it relates to DEQ’s ability to determine whether it needs to issue a provisionally issued permit. *See* PRBRC proposed findings and conclusions at ¶ 92. Without knowing the details of any of the “conditional” violations, including whether a violation is “conditional” merely because it has been appealed by the operator, DEQ – or the public or the EQC - is unable to determine whether a provisionally issued permit is required.

Respectfully submitted this 1st day of July, 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 1st day of July, 2019, the foregoing **REPLY TO OTHER PARTIES' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served on the following parties via electronic mail and the EQC online docket system:

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