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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 CONTURA COAL)	C103
WEST, LLC.: PT0214;)	EQC DOCKET NO. 18-4803
AND IN THE MATTER OF THE)	EQC DOCKET NO. 18-4805
APPLICATIONS FOR COAL MINE)	
PERMIT TRANSFERS OF BLACKJEWEL,)	
LLC.: PT0214 & PT0428.)	

**DEPARTMENT OF ENVIRONMENTAL QUALITY'S
MEMORANDUM ON THE APPLICABILITY OF THE
AUTOMATIC STAY TO THESE PROCEEDINGS**

The State of Wyoming, Department of Environmental Quality (DEQ), hereby submits the following memorandum on the applicability of the automatic stay to these proceedings. In sum, the automatic stay likely applies to these proceedings, and out of an abundance of caution, DEQ recommends that the Council stay these proceedings until the debtor obtains an order from the bankruptcy court providing that the automatic stay is not in effect or an order granting relief from the automatic stay.

The filing of a bankruptcy petition automatically stays:

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before

the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title[.]

11 U.S.C. § 362(a). The automatic stay serves a dual purpose: (1) relieving the debtor from added financial pressure during the pendency of bankruptcy proceedings, and (2) protecting creditors by preventing the premature disbursement of the bankruptcy debtor's estate. *Carver v. Carver*, 954 F.2d 1573, 1576 (11th Cir. 1992).

Despite this breadth, “[t]he automatic stay . . . does not divest all other courts of jurisdiction to hear every claim that is in any way related to the bankruptcy proceeding.” *Picco v. Global Marine Drilling Co.*, 900 F.2d 846, 850 (5th Cir. 1990) (citation omitted). For example, the stay applies only to proceedings “against the debtor.” *Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir. 1989). Proceedings brought by the debtor against other parties do not fall within the proscription of the automatic stay. *Id.*

In addition, there are several statutory exceptions to the automatic stay. *See* 11 U.S.C. § 362(b). Among the exceptions to the automatic stay are:

(4) under subsection (a)(1) of this section, of the commencement or continuation of an action or proceeding by a governmental unit to enforce such unit's police or regulatory power;

(5) under subsection (a)(2) of the section of the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by a governmental unit to enforce such unit's police or regulatory power.

Id. at § 362(b)(4), (5).

Thus, the automatic stay does not bar “the commencement or continuation of an action or proceeding by a governmental unit . . . to enforce such governmental unit’s police or regulatory power.” *Griggs v. Gadsden Revenue Dep’t*, 327 Fed. Appx. 186, 188 (11th Cir. 2009) (citing 11 U.S.C. § 362(b)); *see also In re Union Golf of Fla., Inc.*, 242 B.R. 51, 58 (Bk. M.D. Fla. 1998). “The exception to the automatic stay . . . recognizes that the government must be able to enforce its laws uniformly without regard to the debtor’s position in the bankruptcy court. [] Consequently, Congress permitted a suit by the government to prevent or stop violation of fraud, environmental protection, consumer protection, safety, or similar police or regulatory laws to proceed.” *Brock v. Rusco Indus., Inc.*, 842 F.2d 270, 273 (11th Cir. 1988) (internal quotations and citations omitted).

Applying the foregoing rules of law to these proceedings leads to the conclusion that the automatic stay likely applies. First, the plain language of the automatic stay is broad and inclusive. As it relates to this action, the text plainly states that administrative proceedings against the debtor that were commenced before the bankruptcy petition was filed are automatically stayed upon the filing of a petition. 11 U.S.C. § 362(a). The statute is not limited to particular types of proceedings or particular kinds of relief that might be sought against the debtor. It simply applies to all “judicial, administrative, or other proceedings.” Accordingly, unless this action is not against the debtor or an exception applies, the automatic stay likely applies to these proceedings.

The hearing on the Powder River Basin Resource Council’s (PRBRC) objections is an action against the debtor. While the applications for mine permit transfers initiated DEQ’s process, these proceedings were initiated by PRBRC’s Amended Objections and

Petitions for Hearing. These proceedings are in both form and substance an action against the debtor challenging the propriety of granting the permit applications.

That being so, no exception to the automatic stay likely applies to these proceedings. The exception applicable to governmental entities enforcing their police and regulatory powers does not apply here because PRBRC is not a governmental entity. *See, e.g., In re Edison Mission Energy*, 502 B.R. 830, 834-37 (Bankr. N.D. Ill. 2013) (Action brought by Sierra Club against power producer did not qualify for exception because Sierra Club was not a governmental unit, but stay lifted on other grounds). Had DEQ brought an action against Blackjewel for violation of the Environmental Quality Act, that action would qualify under the exception, but DEQ did not bring the present action. It participated as a party, but it did not initiate these proceedings. Accordingly, the police and regulatory powers exception does not apply, and DEQ does not believe any other statutory exception is arguably applicable here.

In addition, the Council may not even have the authority to determine the applicability of the automatic stay to these proceedings. It is clear that the imposition of the automatic stay in a bankruptcy case ““does not divest all other courts of jurisdiction to hear every claim that is in any way related to the bankruptcy proceeding. . . . Other district courts retain jurisdiction to determine the applicability of the stay to litigation pending before them, and to enter orders not inconsistent with the terms of the stay.”” *Mother African Union Methodist Church v. Conference of AUFCMP Church (In re Conference of African Union First Colored Methodist Protestant Church)*, 184 B.R. 207, 215 (Bankr. D. Del. 1995) (quoting *Picco*, 900 F.2d at 850). Other federal and state courts have ruled to

the same effect. *See, e.g., Hunt v. Bankers Trust Co.*, 799 F.2d 1060, 1069 (5th Cir. 1986) (finding that district court and federal appeals court had jurisdiction to determine applicability of stay to case pending before district court, as well as effect of stay on order forbidding filing bankruptcy anywhere else); *N.L.R.B. v. Edward Cooper Painting, Inc.*, 804 F.2d 934, 938-39 (6th Cir. 1986) (finding that court of appeals in which stayed litigation is pending has jurisdiction to decide not only its own jurisdiction but also the issue whether stay even applies); *Westlund v. State, Dept. of Licensing*, 55 Wash. App. 82, 778 P.2d 40 (1989), rev. denied, 113 Wash. 2d 1020, 781 P.2d 1322 (1989) (court is empowered to determine whether or not the proceeding to revoke the debtor's license is subject to the automatic stay provision).

What is not clear, however, is whether an administrative agency, like the Council, has the same authority as a court to determine whether its proceedings are subject to the automatic stay. The Council is not a court and not vested with the same powers as a court. Absent clear authority to determine the applicability of the automatic stay, the most conservative course of action would be to simply ask the bankruptcy court to make the determination. The Council is not the proper party to make that request, but the debtor is.

Because the stay likely applies and because the Council does not have clear authority to determine the applicability of the stay, DEQ recommends that the Council stay these proceedings until the debtor obtains an order from the bankruptcy court providing that the automatic stay is not in effect or an order granting relief from the automatic stay.

DATED this 5th day of July, 2019.

 FOR:

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing upon the persons below via e-mail and by depositing the same in the United States mail, first-class postage prepaid, this 5th day of July 2019, addressed as follows:

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