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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In re Brook Mining Co., LLC coal mine)
permit – PT0841) EQC Docket No. 20-4802
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)
)

**POWDER RIVER BASIN RESOURCE COUNCIL’S RESPONSE TO BROOK MINING
CO., LLC’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

By and through its undersigned counsel, and pursuant to scheduling order in this above-captioned proceeding, the Powder River Basin Resource Council (“Resource Council” or “PRBRC”) hereby provides its response to Brook Mining Co., LLC’s (“Brook”) first request for production of documents.

General objections to all requests for production of documents

1. The documents are not likely to lead to the discovery of relevant evidence

Powder River Basin Resource Council objects to the scope of the requests for production as they are overbroad and the burden to respond outweighs the likelihood of obtaining relevant and discoverable information. In contested case proceedings such as this, evidence must be relevant. W.S. § 16-3-108(a) (“In contested cases irrelevant, immaterial or unduly repetitious evidence shall be excluded . . .”). Here, none of the requests for production are tailored to obtain documents or information relevant to the claims or issues brought forward by the Resource



Council in this proceeding or defenses that may be raised by Brook. The Resource Council's internal strategy documents, internal organizing documents, and funding and financial records are not relevant to this proceeding. The Resource Council's claims are based solely on the Wyoming Environmental Quality Act and its associated implementing regulations and whether Brook has complied with those legal requirements. It is absurd for Brook to suggest that they could be excused from compliance with these laws and regulations based on facts about the Resource Council's motives for bringing a Petition for Hearing, funding, or internal strategy discussions related to advocacy campaigns. Motive, funding, or internal decisions made by the Resource Council have no possible bearing on Brook's defenses in this proceeding. This is especially true given none of the records requested were before DEQ at the time of its decision approving Brook's coal mine permit, and therefore all of the records requested are squarely outside the administrative record that is on appeal before the EQC.

Given the lack of relevance, the only purpose of the requests for production is to harass and intimidate the Resource Council and its members. The requests amount to an intrusive, ideologically motivated attempt by a company to intrude into the strategy, funding, and policy discussions of the Resource Council. Brook and its parent company Ramaco Carbon have an elaborate public relations campaign, which includes speaking ill of its opposition such as the Resource Council.¹ At times, these intimidation and harassment tactics have carried over into the EQC proceedings,² and this discovery request is no different. While Brook may make incorrect

¹ See, e.g. Statement from Randy Atkins: "As is the design of the PRBRC, this of course creates another round of time consuming and costly review which costs Wyoming taxpayers and delays creation of Wyoming jobs." https://trib.com/business/energy/landowner-group-files-appeal-over-states-decision-on-new-coal-mine/article_4cac6a2e-0fd5-5800-bf6b-af99c551c9e0.html

² See <https://www.wyofile.com/coal-lawyers-try-stifle-citizens-comments-mine/>

statements about the Resource Council's motives, regardless of what those motives are, they are not relevant to the Resource Council's claims or Brook's defense of those claims.

2. The temporal scope of the records sought is not tailored to the proceeding at hand

Brook had ample opportunity to conduct discovery and request documents from the Resource Council in 2017 during the previous contested case proceeding. Brook even deposed Resource Council Executive Director Jill Morrison at the time and asked Ms. Morrison an extensive set of questions, which she voluntarily answered to the fullest extent she could. As such, Brook should be limited to discover only new information since the time of previous discovery. Most of the discovery requests here go back five years, and are overbroad and burdensome. The Resource Council objects to producing any records created by the Resource Council or records that came into the possession of the Resource Council before May 2017.

3. Some of the documents are protected by attorney-client privilege

We object to providing the content of privileged attorney-client communications, including communications and board meeting minutes associated with privileged conversations between Resource Council Staff Attorney Shannon Anderson and the Board of Directors.

4. The documents are protected from disclosure under the U.S. and Wyoming Constitutions

The records sought are protected from disclosure as they involve communications, financial contributions, or other interactions with our organization allowing an individual (or group of individuals) to exercise the right to free speech and to associate under the 1st and 14th Amendments to the U.S. Constitution and Article 1, Sections 20 and 21 of the Wyoming Constitution.

The right of association is a "basic constitutional freedom," *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973), which, "like free speech, lies at the foundation of a free society." *Shelton v.*

Tucker, 364 U.S. 479, 486 (1960). The Supreme Court has squarely recognized that effective advocacy is often enhanced by group association. *NAACP v. Alabama*, 357 U.S. 449, 460 (1958). This “freedom to associate” is an indispensable means of protecting liberty and protecting the rights of citizens to engage in “activities protected by the First Amendment speech, assembly, petition for the redress of grievances, and the exercise of religion.” *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). Thus, the “freedom to associate with others for the common advancement of political beliefs and ideas is... protected by the First and Fourteenth Amendments.” *Kusper*, 414 U.S. at 56-57.

The Supreme Court has recognized that the “privacy in one’s associations” is critical to the freedom of association, and therefore has held discovery requests for an organization’s membership list to strict scrutiny. *NAACP*, 357 U.S. at 460-62 (1958); *see also Church of Hakeem, Inc. v. Superior Court of Alameda Cnty.*, 110 Cal. App. 3d 384, 388 (1980) (applying strict scrutiny in cases between private parties). This level of review requires a “relevant correlation” or “substantial relation” between the stated governmental interest and the information requested for disclosure. *Buckley v. Valeo*, 424 U.S. 1, 64 (1976). As such, the party seeking discovery must show the information sought is “highly relevant to the claims or defenses in the litigation—a more demanding standard of relevance than that under Federal Rule of Civil Procedure 26(b) (1).” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1161 (9th Cir. 2010). The request must also be “carefully tailored to avoid unnecessary interference with protected activities, and the information must be otherwise unavailable.” *Id.* As discussed above, Brook has not met this standard since the records sought are irrelevant to claims or defenses in the EQC proceeding.

Additionally, information about amounts and frequencies of charitable contributions given to the Resource Council is protected as free speech. The Supreme Court has held repeatedly that charitable appeals for funds fall within the free speech protections of the First

Amendment. The freedom of association includes “the right to pool money through contributions, for funds are often essential if ‘advocacy’ is to be truly or optimally ‘effective.’” *Buckley*, 424 U.S. at 65-66 (1976) (quoting *NAACP*, 357 U.S. 516). Thus, the Supreme Court has refused to “draw[] fine lines between contributors and members but have treated them interchangeably.” *Id.*; see also, *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1988); *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947 (1984); *Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980); cf. *Madigan v. Telemarketing Associates*, 538 U.S. 600 (2003). These communications “involve a variety of speech interests—communication of information, the dissemination and propagation of views and ideas, and the advocacy of causes—that are within the protection of the First Amendment.” *Schaumburg*, 444 U.S. at 632.

Without waiving any of the aforementioned objections, PRBRC responds as follows to the requests for production.

REQUEST FOR PRODUCTION NO. 1: Provide Copies of IRS Form 990s and all schedules and attachments for the last 5 years for PRBRC

RESPONSE:

The publicly available portions of the last three years of IRS Form 990s for PRBRC are available for free on the website Guidestar. Please visit <https://www.guidestar.org/profile/74-2183158> to download the 990s. Copies are also attached to this response for your convenience.

REQUEST FOR PRODUCTION NO. 2: Provide copies of Bylaws and Articles of

Incorporation for PRBRC

RESPONSE:

Without waiving the relevancy objection discussed above, the documents are attached to this response. It should be noted that the Articles of Incorporation are available to download for free by the public on the Wyoming Secretary of State's office website. We have also provided a copy of the 2020 Nonprofit Corporation Annual Report provided to the Wyoming Secretary of State's office, which is publicly available for free on their website (along with previous years of filings).

REQUEST FOR PRODUCTION NO. 3: Provide any and all minutes of Board of Directors or Membership meetings for the last 5 years for the PRBRC

RESPONSE:

Please see objections discussed above. The Resource Council Board of Directors meets six times per year and almost all of the content of those meetings involves topics besides the Brook Mine. The only items related to this proceeding before the EQC include the following statement from the May 15, 2020 Board of Directors minutes, which is copied in full:

Ramaco Next Steps- The board discussed a preliminary approval to grant Powder River to act on any appeal/settlement. We expect a decision in about 60 days which is around the time of the next board meeting. Meanwhile it was recommended we create a subcommittee of Marcia, Gillian, Bob, Shiva, and Joan for review of the preliminary decision, and Joan recommended adding John Buyok to that committee.

And the following statement from the July 17, 2020 Board of Directors minutes, which is copied in full:

Ramaco Decision: Shannon and Jill updated the Board on the Ramaco mine permit, its issues, and the options open at this point. Gillian moved that Powder River look into all the areas needed, to talk to Big Horn Coal, look into other permits and then appeal if needed. Second by Joan. Bob offered a friendly amendment to authorize an appeal to the Environmental Quality Council at Jill's discretion. Motion carried on Bob's amendment. A vote was held on Gillian's motion as amended and was approved.

As discussed above, the Resource Council's internal deliberations and strategy discussions have no bearing on the Resource Council's claims nor are they relevant to Brook's defenses.

Additionally, minutes of the Board of Directors and minutes of membership meetings of a Wyoming nonprofit corporation are available only to members and only if "[t]he member's demand is made in good faith and for a proper purpose." W.S. § 17-19-1602(c), *citing id.* at §§ 1602(b) and 1601(a), which provides "A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors as authorized by W.S. 17-19-825(d)." *See, e.g. Clark v. Ryan Park Prop. & Homeowners Ass'n*, 2014 WY 169, 340 P.3d 288, (Wyo. 2014).

Without waiving any objections related to the relevancy of such information, the Resource Council is sharing the excerpts above in a spirit of accommodation.

REQUEST FOR PRODUCTION NO. 4: Current membership list and list of Board of Directors with address for each member or director of PRBRC

RESPONSE:

Please see objections discussed above. We object to providing addresses or other contact information for members, not otherwise publicly available (please see the WY Secretary of State

filings for officer addresses). This is information collected solely for members to exercise their rights to associate and make financial contributions to the organization, rights which are protected under the 1st and 14th Amendments to the U.S. Constitution and Article 1, Sections 20 and 21 of the Wyoming Constitution. Pursuant to our organizational policies, we do not provide that information to any third-party, without vote and approval by our Board of Directors, or without direct consent of the member.

This organizational policy is necessary to comply with W.S. § 17-19-1605, which provides that “Without consent of the board, a membership list or any part thereof may not be obtained or used by any person for any purpose unrelated to a member’s interest as a member.” In other words, producing the membership list requested by Brook would violate Wyoming law.³ A similar objection was provided to Brook in the 2017 round of discovery requests and responses.

Some members have voluntarily provided contact information on their objection letters submitted to DEQ before the April 23, 2020 deadline, and Brook agents and counsel already have access to that information.

We request that Brook agents and counsel contact any members identified in the Petition for Hearing only through Ms. Anderson as these members are not individual parties to this proceeding.

³ Like minutes of the Board of Directors, a list of the Board of Directors shall only be provided to a member, and only if the member’s demand is made in good faith and for a proper purpose.

REQUEST FOR PRODUCTION NO. 5: Any documents that detail and account for any and all membership fees, dues, or contributions to the PRBRC

RESPONSE:

Information about membership and membership fees is available on our website at <https://www.powderriverbasin.org/donate-join/> In general, annual membership fees are \$20 for a senior or student; \$30 for an individual; \$50 for a family; \$50 for a contributing member; \$100 for a supporting member; and \$250 for a benefactor. Members can also join affiliate organizations, which are organized by groups of members, for an additional \$5 per year. A gift membership given by someone else for the benefit of a new member is \$25.

We strenuously object to producing any financial records or membership databases of the organization that detail membership or donation amounts from members and donors. This information is protected from disclosure under the U.S. and Wyoming Constitutions and legal precedent interpreting these Constitutional provisions.

Additionally, information associated with any member or donor not specifically identified in the Petition for Hearing is irrelevant to the proceedings. If Brook wishes us to verify membership status for any of the individuals named in the Petition for Hearing, we can easily do that through an affidavit from our Executive Administrator who manages our donation database; however, we will not disclose donation amounts or contact information associated with these individuals.

Respectfully submitted this 21st day of September, 2020.

/s/ Shannon Anderson
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21st day of September, 2020, the foregoing **RESPONSE TO BROOK MINING CO., LLC'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** was served on the following parties via electronic mail.

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