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Submitted via electronic and first-class mail

**CITIZEN COMPLAINT AND REQUEST FOR INVESTIGATION
REGARDING WYOMING COAL MINE PERMITS PT-0214 AND PT-0428 – THE
BELLE AYR AND EAGLE BUTTE MINES**

Dear Mr. Fleischmann:

In accordance with Sections 517(h) and 521(a) of the Surface Mining Control and Reclamation Act (“SMCRA”), and on behalf of our members who live, work, own property, and/or recreate in close proximity to the Eagle Butte and Belle Ayr coal mine permit boundaries, the Powder River Basin Resource Council submits this citizen complaint and request for investigation related to the permit violations described below. We ask you to review the violations, forward our complaint as necessary to the Wyoming Department of Environmental Quality (DEQ), and if the DEQ chooses not to act, we request a federal investigation and enforcement action to be initiated by your office.

Statement of Interest

The Powder River Basin Resource Council (“Resource Council” or “PRBRC”) is a person who is or may be adversely affected by the coal mining operations that are the subject of this complaint. The Resource Council is an organization that advocates for the conservation of Wyoming’s unique land, mineral, water, and clean air resources consistent with responsible use of those resources to sustain the livelihood of present and future generations. The Resource Council has worked on coal mining issues in Wyoming since its founding in 1973, advocating for responsible reclamation and bonding policies, reduced air pollution, and ground and surface water protection and management. The Resource Council and its members advocated for the passage of the Surface Mining Control and Reclamation Act (“SMCRA”) and the Wyoming Environmental Quality Act (“WEQA”). Having supported their passage, the Resource Council has a legally cognizable interest in the application of these laws and their implementing regulations, and DEQ and the Office of Surface Mining Reclamation and Enforcement’s (“OSMRE”) application of them to the coal mine permits at issue.

In addition to this organizational interest, the Resource Council's members are adversely affected by violations at the mines. Resource Council members own property, live, ranch, work, travel, and/or recreate next to the mines that are the subject of this complaint. As such, the members experience aesthetic and other legally recognizable injury from the mining operations, which will be prolonged and increased if reclamation activities are delayed or not completed.¹ Conversely, the Resource Council's members' property and personal interests will be benefited if reclamation occurs at the mines as required by the DEQ's regulations. Such reclamation is only guaranteed to occur if the mine and reclamation plans contain enforceable timelines of when such reclamation will occur.²

Violation #1: Failure to Update the Mines' Annual Reports after Temporary Cessation for Longer Than Thirty Days

The Eagle Butte and Belle Ayr permits are in violation of state and federal rules that require a permittee to submit an update to its annual report if the permittee anticipates a temporary cessation of operations to occur longer than thirty days.

It is very public knowledge that the Eagle Butte and Belle Ayr Mines were shut down on July 1, 2019, stemming from events in the Blackjewel bankruptcy proceedings.³ The mines have been in temporary cessation since that time – over seven weeks.

While Blackjewel - the operator contracting with the permittee Contura Coal West (Contura) - may have been the party to decide to shut down operations, Contura remains legally responsible for all permit terms and conditions. Therefore, Contura is the party responsible for compliance with all state and federal regulatory requirements.

Importantly, Contura is not itself in bankruptcy proceedings, nor does Contura own the mines at issue at this time because a sale in the bankruptcy proceedings has not yet closed. Therefore any enforcement action against Contura is not an action against a "debtor" or the "debtor's estate" for purposes of 11 U.S.C. § 362(a) (providing that upon the filing of a petition under chapter 11 of the bankruptcy code, an "automatic stay" comes into effect barring the

¹ See *Friends of the Earth, Inc. v. Laidlaw Env'tl. Servs.*, 528 U.S. 167, 183 (2000) (holding that "[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity."); See also *Great Basin Mine Watch v. Interior*, 456 F.3d 955 (9th Cir. 2006), where a plaintiff organization challenged, in part, financial assurance requirements for a mining operation, based on its aesthetic and recreational injuries.

² It should be noted that similar to showing whether a party is "adversely affected" under SMCRA and the WEQA, Article III standing "does not demand a demonstration that victory in court will without doubt cure the identified injury. . . . Our cases require more than speculation but less than certainty." *Teton Historic Aviation Found. v. U.S. Dep't of Defense*, 785 F.3d 719, 727 (D.C. Cir. 2015) (citation omitted).

³ On July 1, 2019, Blackjewel, LLC, the operator of the Eagle Butte and Belle Ayr Mines, and four associated companies, petitioned for relief under Chapter 11 of the U.S. bankruptcy code in the U.S. Bankruptcy Court for the Southern District of West Virginia. See <https://cases.primeclerk.com/blackjewel/>

“commencement or continuation” of various actions or proceedings against a debtor).⁴ Regardless, bankruptcy law is clear that a bankruptcy does not excuse compliance with other federal law and regulations and state and federal regulatory authorities maintain the ability to carry out enforcement actions during bankruptcy proceedings under the police and regulatory powers exception to the automatic stay provisions. 11 U.S.C. § 362(b)(4). A DEQ or OSMRE investigation and enforcement action carried out in response to this complaint would fall under those exceptions.⁵

Contura’s permits are in violation of the rules that require notice to the DEQ and submission of an update to the permits’ annual reports and a notice to the regulatory authority once a permittee is aware that a temporary cessation will exceed thirty days.

State regulations provide:

Cessation of operations. When it is known that a temporary cessation of operations will extend beyond 30 days, the operator shall submit to the Administrator that information required in an annual report.

DEQ Coal Rules & Regulations Ch. 4 § 2(u).

Federal regulations provide:

Before temporary cessation of mining and reclamation operations for a period of thirty days or more, or as soon as it is known that a temporary cessation will extend beyond 30 days, persons who conduct surface mining activities shall submit to the regulatory authority a notice of intention to cease or abandon mining and reclamation operations. This notice shall include a statement of the exact number of acres which will have been affected in the permit area, prior to such temporary cessation, the extent and kind of reclamation of those areas which will have been accomplished, and identification of the backfilling, regrading, revegetation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

30 CFR § 816.131(b).

Based on our knowledge and belief, including based on correspondence with the DEQ’s Land Quality Administrator Kyle Wendtland (see attached), Contura has not submitted this

⁴ As evidence of this exception, the Wyoming Environmental Quality Council recently approved a renewal of Contura’s permit for the Belle Ayr Mine, ending a contested case hearing on the permit renewal. Such actions were deemed to be outside the scope of the automatic stay provisions as they related solely to Contura.

⁵ This is especially true as the relief the Resource Council is seeking is not injunctive relief, revocation of permits, or a cessation order. We are merely seeking compliance with a requirement to submit additional paperwork and information to supplement and amend the permits.

required notice and update to DEQ. As the permittee, Contura is obligated to ensure compliance with these requirements.⁶

This violation is significant. The update to the annual report is required to provide notice to the DEQ, mine employees, and the community of the permittee's plans, including how long the temporary cessation will last. It is required to ensure all appropriate actions are taken to stabilize and protect the site during temporary cessation. It is also required to include detailed plans to respond to and correct any environmental hazards that unexpectedly occur during cessation as part of the permit, ensuring such plans are enforceable by state and federal regulators. Finally, the federal regulations make clear that a company must delineate plans related to reclamation, environmental monitoring, and water treatment activities that will continue during the temporary cessation.

We understand the chaos of the situation. However, Blackjewel's bankruptcy and decision to cease mining operations does not excuse Contura from compliance with these requirements. *See* 30 C.F.R. § 816.131(a) (providing that "Temporary abandonment shall not relieve a person of their obligation to comply with any provisions of the approved permit.").

Violation #2: Contura Has Failed to Update Its Mine and Reclamation Plans

Contura is also in violation of state and federal requirements requiring updates to the permits' mine and reclamation plans.

A core requirement of all surface coal mining permits is a "mining plan and reclamation plan dealing with the extent to which the mining operation will disturb or change the lands to be affected, the proposed future use or uses and the plan whereby the operator will reclaim the affected lands to the proposed future use or uses." W.S. § 35-11-406(b). Such reclamation plan must include, among other things, "A projected timetable for accomplishment of the reclamation plan." *Id.* at § 406(b)(xix). Additionally, the reclamation plan must be able to "accomplish reclamation" as required by SMCRA and the WEQA. *Id.* at § 406(n)(ii).

Moreover, a company conducting surface coal mining operations must "Conduct all surface mining and reclamation activities within the permit area and in conformity with his approved plan." *Id.* at § 415(b)(ii). Additionally, the company must "Reclaim the affected land as mining progresses in conformity with the approved reclamation plan." *Id.* at § 415(b)(ix).

Contura's permits currently delineate long-term mining and reclamation plans, including a life of mine for both mines that extends well into the future. However, as the attached media reports show,⁷ Contura has been very public about its new plans to finish mining operations

⁶ While the WEQA and associated regulations often refer to "operator" and not "permittee" it is clear that all obligations apply to the permit holder. *See* W.S. § 35-11-415(a) (providing that "Every operator to whom any permit . . . is issued shall comply with all requirements of this act, the rules and regulations promulgated hereunder, and reclamation plans and other terms and conditions of any permit.")

⁷ These news reports are also available at: <https://www.spglobal.com/marketintelligence/en/news-insights/trending/6X0SXf4PXTxe767K94LXaA2> ; <https://www.wyomingpublicmedia.org/post/contura-may-close-wyoming-mines-sooner-anticipated> ; https://www.gillette newsrecord.com/news/local/article_62c62afd-f745-5c06-8474-7c3fe81517ce.html

within a year and completing reclamation within ten years – with most of that work being the long-term monitoring required during the waiting period for Phase III bond release.

The company's mine and reclamation plans thus require major revisions to come into compliance with the aforementioned requirements to specify timetables and to conduct operations in conformance with approved plans. These revisions are critical to ensure the enforceability of permit terms and conditions, and especially company obligations to carry out contemporaneous reclamation as delineated in the reclamation plan.

Requested Relief

The violations described above require Contura to immediately submit updates and new information to DEQ/OSMRE for the agencies' review. The new information and amendments to the mine and reclamation plans should be deemed a major modification to the permits, requiring public notice and comment/objection opportunities. Finally, the amendments to the annual reports should be publicly noticed when they are submitted, similar to public notice requirements for all other submissions of annual reports.

By this letter, the Resource Council is notifying both DEQ and OSMRE of this complaint. Should DEQ fail to issue a notice of violation to Contura, we request that OSMRE conduct a federal inspection and take appropriate enforcement action as described above.

The Resource Council hereby waives its rights to confidentiality and requests the right to accompany the inspector on any inspection of the mine site(s) if such a field inspection(s) is held. You can reach our organization at the address and telephone number listed below.

In accordance with 30 C.F.R. § 842.12(d) and Chapter 16, Section 1(d) of the DEQ's Land Quality Division rules and regulations, the Resource Council requests that OSMRE or DEQ report the results of any inspection within 10 days from the date of the inspection, or if OSMRE or DEQ chooses not to inspect, to explain the reasons for that decision, within 15 days from the date that this letter is received.

Thank you for your time and consideration of this information and we look forward to your timely response.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Anderson", with a long horizontal line extending to the right.

Shannon Anderson
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