

EXHIBIT TO

IN THE MATTER OF THE APPEAL)
OF THE PITTSBURG & MIDWAY)
COAL MINING CO.'S WELCH)
PERMIT NO. 497-T4.)

) Docket No.: 07-4600
)
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**MEMORANDUM IN SUPPORT OF
MOTION OF THE PITTSBURG & MIDWAY COAL MINING CO.
TO DISMISS PURPORTED APPEAL, WITH PREJUDICE**

EXHIBIT "J"



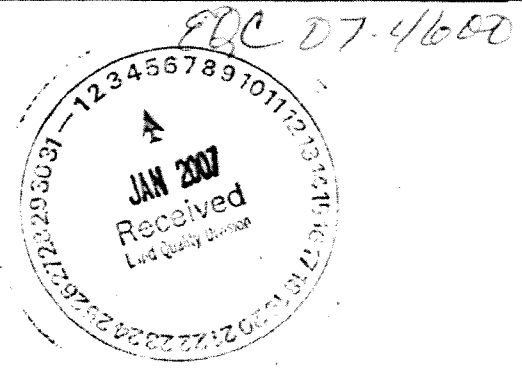
Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

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OSM
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Dave Freudenthal, Governor

John Corra, Director



January 3, 2007

Mr. John C. Willson
PO Box 2244
Gillette, WY 82717

Dear Mr. Willson:

As I indicated to you during our phone conversation on December 11, 2006, Rick Chancellor and I met with P&M Coal Company for the purpose of determining the degree of culpability on P&M's part regarding documentation showing surface access in their most recent permit renewal application. What follows is the written version of the conclusion that I had reached prior to this call, and that I had discussed with you on that call. You raised another question that I needed to research before sending this letter to you, hence the delay. That research does not change my position on this matter. I summarize this in the third to last paragraph of this letter.

Section 35-11-409 (a) of the Act provides me with the authority to revoke the permit if I find that P&M intentionally misstated or failed to provide any fact that would have resulted in the denial of a permit. I am satisfied that there was no deliberate attempts to deceive the DEQ because: no attempt was made to alter or disguise the surface access documentation which shows a discrepancy in timing regarding reclamation on your property; second, since prior transactions with DEQ did not raise this matter as an issue, P&M was led to believe that the application for renewal would carry no additional burdens concerning proof of access; and lastly, since there was not a definitive ruling on the part of DEQ extending the bond clock as a result of inter-seeding, P&M made a reasonable and good faith assumption that DEQ was both aware of the difference in timing, that inter-seeding took place, and that the bond clock had not changed.

Section 35-11-412 contains the authority to revoke an operator's mining license for similar reasons as stated in 35-11-409. Here again, I find no evidence that such an action is warranted. Given that the renewal application only calls for permission to extend the term of the permit to cover bond release, and the fact that the permit application provides surface access documentation, there is not a compelling reason to revoke the permit or the license.

Had DEQ addressed the documentation issues during review of the renewal application, the appropriate remedy would have been to condition the permit renewal to require clarification of the access documentation and require a good faith effort to resolve the issue prior to the expiration date of



the current agreement. Taking any other action would only transfer the responsibility to reclaim the area to the DEQ and not resolve the access matter.


I will note that P&M submitted a Surface Landowner's Consent as well as a Surface Use Agreement with its renewal application. Both documents cover and are applicable to your land. The Landowner's Consent documentation is the primary instrument through which DEQ determines an operator's right to disturb and reclaim the land. In this instance, both of those physical activities are complete. The only remaining question is whether the reclamation is successful. Access is obviously required to make this determination and most certainly will be an issue at the appropriate time. Out of an abundance of caution, I am asking Mr. Chancellor to propose a permit condition to P&M for the purpose of resolving discrepancies regarding access issues.

You asked me to look at the 1999 transactions on permits, license to mine, and access agreements to see if there was any intention on the part of P&M to deceive the Department. My examination shows that there is continuity and the permits were properly issued. A surface use agreement was in place, with an expiration date of 2001, at the time of application of permit transfer from Fort Union Coal Company to P & M. A new agreement was signed on July 22, 1999 for an additional 10-year term by the surface owner, Bluegrass Development Company. An agreement has been in place since the time of original permit issuance in 1979, and has always had a 10-year term. In fact it had been renewed twice. The mining license was transferred to P & M in May of 1999, and the Fort Union permit was transferred in July, 1999. A surface use agreement was in place (expiration in 2001 as noted above) and a surface owners consent to reclaim was also signed in July, 1999 (with no expiration date). Later in July, 1999, Bluegrass negotiated the surface access agreement with P&M that you now own. The final permit was issued to P& M in September, 2000.

I understand that part of your concern is the inability to initiate construction of a new home on the property. I recently received a copy of a letter from P&M to you proposing a land use change that would help you with this issue. I encourage you to give this proposal serious consideration as we work through the access matter.

In accordance with Land Quality Division Rules and Regulations Chapter 16, Section 1(e), this constitutes the Departments final action for purposes of any appeal to the Environmental Quality Council.

Sincerely,


John V. Corra
Director

cc: Rick Chancellor, LQD Administrator
John Burbridge, AG's Office

