

**FILED**

**MAY 04 2010**

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL**

**Jim Ruby, Executive Secretary  
Environmental Quality Council**

**STATE OF WYOMING**

A PETITION TO THE ENVIRONMENTAL )  
QUALITY COUNCIL FOR DESIGNATION ) EQC Docket No. 09-1103  
OF AN AREA KNOWN AS SAND CREEK )  
AS VERY RARE OR UNCOMMON )

**REPLY TO MOTION TO STRIKE AND DISMISS**

The following is the Reply of Biodiversity Conservation Alliance to the Motion to Strike and Dismiss filed by John Green on October 6, 2009.


Mr. Green alleges that Erik Molvar, Executive Director of Biodiversity Conservation Alliance, practiced law without a license in filing a petition to designate Sand Creek as Very Rare or Uncommon Petition before the Environmental Quality Council. Mr. Green's Motion references a Cease and Desist letter issued by Phillip T. Willoughby on behalf of the Wyoming Bar Association dated September 21, 2009.

Subsequent to this Cease and Desist letter, on November 6, 2009 Mr. Willoughby issued a second letter on behalf of the Wyoming Bar Association determining that Mr. Molvar "did not engage in the unauthorized practice of law." See Exhibit A. This letter references an Unauthorized Practice of Law Subcommittee Report ("Report") detailing that Mr. Molvar may appear and represent Biodiversity Conservation Alliance as a full-time employee as specifically permitted by EQC rules, a state administrative regulation, under the Wyoming Bar Association Organization and Government Rule 11.1(c). See Exhibit B at unnumbered 1. The Report concludes, "Pursuant to the exceptions of Rule 11.1(c), Molvar's representation is NOT the unauthorized practice of law." Exhibit B at unnumbered 2, emphasis in original.

EQC itself has ruled in its Order Denying Motion for Contempt that under EQC Rules, Chapter 7, "any person may file a petition to designate lands as very rare or uncommon." We concur with this analysis.

As Mr. Molvar has lawfully and solely represented Biodiversity Conservation Alliance in administrative proceedings regarding the potential designation of Sand Creek as Very Rare or Uncommon under the Environmental Quality Act, we ask that the Environmental Quality Council deny Mr. Green's Motion to Dismiss.


Respectfully submitted on this 3<sup>rd</sup> day of May, 2010,

  
\_\_\_\_\_  
Erik Molvar  
Executive Director  
Biodiversity Conservation Alliance  
P.O. Box 1512  
Laramie, Wyoming 82073

Certificate of Service

I hereby certify that a true and correct copy of the foregoing Reply to Motion to Strike and Dismiss was delivered to the following by U.S. Mail, post-paid and return receipt requested, and via fax, as of the date of signature.

John Green  
Mineral Hill, L.P.  
P.O. Box 33010  
Austin, Texas 78764  
FAX (512) 692-2936

  
\_\_\_\_\_  
Erik Molvar

5/3/10  
\_\_\_\_\_  
Date

*Phillip T. Willoughby*  
*Attorney at Law*

4100 Sweetbrier, Suite 109  
Casper, WY 82604  
FAX 307-472-1973  
307-266-4549

---

November 6, 2009

Eric Molver  
P.O. Box 1512  
Laramie, WY 82073

RE: Compliant to Unauthorized Practice of Law Committee

Dear Mr. Molver:

I believe that you know a complaint was filed with the Unauthorized Practice of Law Committee by John Green, general partner of Mineral Hill. As the chairman of the committee I appointed a subcommittee to investigate this matter. I have included a copy of Mr. Green's compliant, initially submitted to the Board of Professional Responsibility. That board does not have jurisdiction over non-attorneys. The matter was referred to my committee.

I enclose the report from the subcommittee.

As indicated it has been determined it is not the unauthorized practice of law for you to appear and file before the EQC. Their rules specifically indicate non-attorneys may practice before the council.

The committee did express concern about your webpage which indicates you author... "appeal and legal briefs" on projects effecting public lands. We are assuming this means before bodies such as the EQC.

As a consequence this committee has decided you did not engage in the unauthorized practice of law.

Sincerely,

THE LAW OFFICE OF PHILLIP T. WILLOUGHBY

  
\_\_\_\_\_  
Phillip T. Willoughby, Chairman U.P.L. Committee

PTW:dcw

c: Sleeter Dover, Executive Director of the Wyoming State Bar, with enclosure, by email  
U.P.L. Committee, with enclosure, by email  
John Green, with enclosure

EHXIBIT A



## UNAUTHORIZED PRACTICE OF LAW SUBCOMMITTEE REPORT

Our subcommittee was asked to address whether Erik Molvar's representation of the Biodiversity Conservation Alliance before the Environmental Quality Council constituted the unauthorized practice of law. As explained below, I have reached the conclusion that Molvar is **not** committing the unauthorized practice of law.

Erik Molvar is the executive director of Biodiversity Conservation Alliance, a registered non-profit corporation with the Wyoming Secretary of State. Jim Ruby at the EQC directed me to the EQC Rules of Procedure on their website at <http://deq.state.wy.us/eqc/index.asp>. The Sandcreek II (EQC 09-1102) case, where Molvar has appeared on behalf of Biodiversity Conservation Alliance, is also available on their website. Interestingly, a Motion for Contempt was filed in the Sandcreek II docket asserting that Molvar was committing the unauthorized practice of law. That motion and the order denying the motion are attached to this email. Ultimately, the EQC found that Mr. Molvar's representation of Biodiversity Conservation Alliance complied with EQC Rules.

Wyo. Bar Assn. Organ. & Gov't. Rule 11.1 defines the unauthorized practice of law. Rule 11.1 generally states that providing legal advice, drafting legal documents, and appearing and advocating before a tribunal is the practice of law. However, there are exceptions to the rule. Rule 11.1(c) provides in pertinent part:

(c) Exceptions to definition of "practice law." . --

(1) **Appearing as an advocate in a representative capacity before any body, board, committee, or commission constituted by law**, if that body, board, committee or commission is functioning as an adjudicative body is not practicing law **when such conduct is authorized by** Wyoming Supreme Court rule, federal statute, state statute, county or city resolution or ordinance, federal administrative regulation, **or state administrative regulation**.  
Rule 11.1 (emphasis added).

The EQC Rules were promulgated under the Wyoming Administrative Procedure Act and the Wyoming Environmental Quality Act. *See* Section 1, Chapter I. Chapter II (Rules of Practice and Procedure Applicable to Hearings in Contested Cases) of the EQC Rules allows for the appearance of attorneys and non-attorneys in EQC proceedings. *See* Chapter II attached to this email. Specifically, Section 6 of Chapter II provides in pertinent part:

### Section 6. Appearance

(a) Appearances and representation of parties shall be made as follows:

(iii) A corporation may appear and be represented by a corporate officer or a full-time employee of said corporation.

(v) An unincorporated association may appear and be represented by any bona fide general officer or full-time employee of such association.

The EQC Rules, a state administrative regulation, permits Molvar, the executive director, to represent Biodiversity Conservation Alliance in EQC proceedings. Pursuant to the exceptions of Rule 11.1(c), Molvar's representation is NOT the unauthorized practice of law. There is one caveat. If Molvar appears on behalf of other entities that he is not a corporate officer for or a full time employee he would be committing the unauthorized practice of law. Please let me know if you disagree or believe I have missed anything.