ENVIRONMENTAL QUALITY COUNCIL
Meeting Minutes
August 29, 2007

Members Present: Richard C. Moore, P.E., Chairman; Sara Flitner, Vice-Chair; Dennis Boal, Secretary; Mark Gifford, John Morris

Absent Members: Kirby Hedrick and Dave Searle

Others Present: Joe Girardin, Paralegal, Environmental Quality Council; Kim McGee, Executive Assistant, Environmental Quality Council; Bridget Hill, Asst. Attorney General; Deb Baumer, Office of Administrative Hearings; Matt Micheli, Representing Williams Production; Tom Toner, Representing William P. Maycock; Mike Barrash, Asst. Attorney General, Representing DEQ; Joseph Guida, Representing Frontier Refining, Inc.; Mel Luikkenfeld, Manager of Relations and Special Projects of Frontier Refining; Cynthia Lummis, Arp and Hammond; Mike Barrash, Asst. Attorney General, Representing DEQ; Carl Anderson, SHWD DEQ

1. Call to Order:

Chairman Moore called the meeting to order. Chairman Moore turned the meeting over to the hearing examiner, Deb Baumer from Office of Administrative Hearings for the case of the Appeal of William P. Maycock, WYPDES Permit No. WY00500857, Docket No. 06-3818.

PRE-HEARING: William P. Maycock, WYPDES Permit No. WY00500857, Docket No. 06-3818

Ms. Baumer explained that the pre-hearing conference was to be held at this meeting in Rock Springs, but on August 23, 2007 the EQC had received a Joint Stipulation for Modification of WYPDES Permit in this contested case. She asked Mr. Barrash to provide the Council with an update on the matter. Mr. Barrash explained the Joint Stipulation to the Council along with an update on the modification. Ms. Baumer asked Mr. Toner if he had anything to add. Mr. Toner explained that the DEQ and Mr. Barrash had been very helpful in establishing parameters in the permit that they think would allow independent verification. He asked for the Council to approve the stipulation and modify the permit as agreed upon. Ms. Baumer asked Mr. Micheli if he had anything to add. Mr. Micheli agreed with Mr. Toner and the modifications. Ms. Baumer turned the case over to the presiding office, Sara Flitner, for discussion among the Council.

Ms. Flitner asked for discussion among the Council. Chairman Moore commented that he presided in the pre-hearing that was held in June of 2007 in Casper because of technological difficulties. Ms. Flitner was available by video conference but was unable to participate. He was very pleased that the parties were able to resolve the issues and bring a proposed Stipulated Modification to the permit back to the Council for consideration. The Council discussed the expiration date, which was set to expire December 31, 2008. It seemed that the expiration date was rather soon for a permit and asked if they could reset it for a much more reasonable time.
span for a permit. Mr. Thomas explained that the current expiration date of December 31, 2008 was set forth in the original permit. Modification is made only to the part proposed to be modified. Extending the expiration date of the permit could be done and would be referred to as a renewal of the permit instead of a modification.

Ms. Flitner asked for a motion. Mr. Gifford moved to approve the Joint Stipulation as submitted. Chairman Moore asked Mr. Gifford to amend his motion by stating that the parties prepare an order for the presiding officer to sign. Mr. Boal seconded the motion. Ms. Flitner asked for discussion on the motion. Hearing none, all were in favor of the motion. Motion carried. Chairman Moore asked Mr. Barrash to prepare an order with the other parties for the presiding officer to sign. Mr. Barrash said he would.

COUNCIL BREAK:

Chairman Moore reconvened the meeting at 10:00 A.M. by introducing the Council and staff present.

Chairman Moore asked to amend the agenda by moving Item 5, Frontier Refinery to Item 4 so that it would follow Adobe Town. This would accommodate the participants of Adobe Town and Frontier Refinery with their travel back home.

2. Approval of Minutes:

Chairman Moore stated that there was not a quorum at the meeting of the members that were present at the meeting to be approved. The approval process will be deferred until the next Council meeting.

3. Adobe Town Petition for Designation of Rare or Uncommon – Discussion of Tour:

Chairman Moore reminded the audience of the process of receiving the petition, considering the petition, public notice of the hearing and the hearing for the designation of rare or uncommon. The Council received a petition from Biodiversity Conservation Alliance for designation of Adobe Town. Earlier in the summer the Council voted to initiate the process of considering the petition to designate a rare or uncommon area for Adobe Town. In order for the Council to better understand the area that had been proposed for designation, they scheduled a tour of the Adobe Town area for yesterday.

The tour started off in the morning with aerial over-flights. The aerial over-flights were donated by an organization called Lighthawk, which is a non-profit organization with volunteer pilots that volunteer their time and their planes to take public officials and other interested parties on aerial tours of areas throughout the country that are being proposed for consideration of major actions. Chairman Moore expressed his appreciation to Lighthawk for providing their flights to the Council and parties. Erik Molvar from Biodiversity Conservation Alliance was on the lead plane to make sure he communicated to the pilots where the planes needed to fly in order to see what they needed to see. Craig Thompson from Western Wyoming College was the guide on the 2nd aircraft. His expertise came from being on the Council in the past and had knowledge of the
area because of his residence being in Rock Springs.

After the flight tour, everyone loaded into heavy vehicles and performed a caravan into the Adobe Town area that took a bigger part of the day to travel. The caravan traveled to the top of the Haystacks and viewed the area of the north end of the proposed designation. Then the caravan traveled to the Adobe Town Rim, Skull Creek Rim and out through the south end of the area. There were no formal presentations at the stops. Everyone got out of the vehicles, viewed the area, discussed what they seen and moved on to the other areas.

Chairman Moore gave the Council members an opportunity to express their thoughts and comments regarding the tour. Mr. Boal expressed his appreciation for everyone that came on the tour and for the BLM giving them access to the area. He was the only Council member that did the fly-over twice. It was very beneficial.

Mr. Boal gave a list of questions that he would like answered at the hearing and not at this meeting. Those questions were: What is the effect of this designation? Are there any producing oil and gas wells in the areas C, D and F on the maps that the BLM provided? If there is, what is the effect of the designation on those producing wells? What effect would the designation have on the BLM's study process of areas A, B, C, and F? What are the concerns of the Livestock Association with the designation?

Mr. Boal asked the petitioner why designate one section of land in the Haystack formation as rare or uncommon and not designate the adjoining section of the Haystack formation that is not uncommon. He felt it would defeat the credibility of rare or uncommon designation. Mr. Gifford echoed Mr. Boal's questions and thoughts. He felt the fly-over was very informative.

Ms. Flitner added a couple of questions to Mr. Boal's list for the party's consideration. Those questions were: Is there a more defined public access to the proposed designated area? Who is the designation for? What are the pro's and con's if the Council was to consider the Wilderness Study Area as rare or uncommon? Mr. Morris felt that most of his questions were already addressed by the previous Council members. He did ask for more information about the petitioner.

Chairman Moore opened up the discussion to the audience and for those who participated in the tours for comments and thoughts they experienced.

Erik Molvar expressed his gratitude and thanked everyone who participated in the tour. He stated that he had a brochure for Mr. Morris from the Biodiversity Conservation Alliance that briefly explains how BCA is funded and information regarding the membership.

Mr. Morris asked Don Schramm from the Livestock Association and the other parties to provide the Council with better maps that indicate the specifics of the proposed area. Mr. Schramm agreed and said that he would get the help needed to complete the task as ask for.

Chairman Moore began discussion with the Council in reference to scheduling the hearing for the proposed designation of Adobe Town as rare or uncommon. The Council scheduled the
public hearing for October 24-25, 2007 in Rock Springs.

COUNCIL BREAK

4. Dismissals

Frontier Refining, Inc. – Docket No. 06-5400, Joint Stipulation and Approval of Order

Chairman Moore began by stating that the hearing was held for the Motion to Intervene by Arp and Hammond in Cheyenne. The Motion to Intervene was contested by both Frontier Refining and the DEQ on a number of grounds. Chairman Moore continued by explaining the procedures of the hearing and what was stipulated and proposed. Chairman Moore asked Mr. Barrash to explain the meeting with the parties, along with the City of Cheyenne in attendance. Mr. Barrash stated that there was discussion and communication given in reference to the request made by Chairman Moore. Mr. Barrash felt they did not come to an agreement.

Chairman Moore explained to the Council members that the Administrative Order on Consent originally issued by the EPA was issued September, 1990. The DEQ assumed responsibility for it in 1995. He felt that it had been a long time in process and it’s one of the reasons that he’s very concerned about the continual delay.

Chairman Moore asked Mr. Anderson to give a very brief synopsis of his understanding of where the DEQ is currently regarding Frontier Refining. Mr. Anderson stated that clean-up of this type of a facility drags on for years and years. It has taken a long time to get where they’re at, but they are finally making progress at addressing some of the clean-up issues.

Mr. Boal explained that the parties were asking the Council for a lot to approve the stipulation, which falls short of what they should be doing. He also explained that the Council feels that the three parties can not be put in a room to come to an agreement because of their feelings that are so strong.

Mr. Corra interrupted Mr. Boal by stating that he did convene a meeting with the parties, thinking that’s what the Council would want them to do. He agreed with Mr. Boal’s thoughts about not being able to come to an agreement. He also feels that this agreement should be made between the landowner and the company.

Mr. Boal continued with his thoughts suggesting the parties going into mediation with a 3rd party. Mr. Gifford feels that involuntary mediations do not get the best results.

Mr. Gifford proposed a motion to approve the Joint Stipulation for Modification of the Administrative Order on Consent that was filed by the DEQ and Frontier Refining on October 17, 2006. Ms. Flitner seconded the motion. Chairman Moore asked for further discussion on that motion. Hearing none, a roll call vote was taken. Mr. Gifford voted aye, Ms. Flitner voted aye, Mr. Boal voted nay, Mr. Morris voted aye and Chairman Moore voted nay. The motion failed. Mr. Boal moved to reconsider the original motion. Chairman Moore asked for a vote to reconsider among the Council. The motion passed. Chairman Moore did a roll call vote for the
motion on the table for the Joint Stipulation for Modification of the Administrative Order on Consent. Mr. Gifford voted aye, Ms. Flitner voted aye, Mr. Morris voted aye, Mr. Boal voted aye, Chairman Moore voted nay. The motion passed.

Mr. Gifford made a motion to deny the Motion of Arp and Hammond Hardware Company to Leave to Intervene and to Supplement the Joint Stipulation for Modification of AOC which was filed February 12, 2007. Ms. Flitner seconded the motion. Chairman Moore asked for discussion on the motion. Chairman Moore stated that he researched the clause in the AOC and it states that the approval of the work plan by DEQ ultimately is a final agency act which can be appealed to the EQC. In his opinion and after listening to the oral arguments previously, he feels it would have been the appropriate time to file the Motion to Intervene. Also, the legal advice from the Attorney General’s office supports this motion at this time.

Chairman Moore asked for further discussion on the motion to deny. Chairman Moore did a roll call vote. Mr. Gifford voted aye, Ms. Flitner voted aye, Mr. Boal voted nay, Mr. Morris voted nay and Chairman Moore voted aye. The motion failed. Ms. Flitner moved to reconsider the motion for denial. Chairman Moore asked for a vote for reconsideration. The motion passed unanimously. Chairman Moore asked Mr. Gifford to amend his motion to approve the Motion to Intervene and to Supplement the Joint Stipulation for Modification. Chairman Moore called for a roll call vote. Mr. Gifford voted nay, Ms. Flitner voted nay, Mr. Morris voted aye, Mr. Boal voted nay, Chairman Moore voted nay. The motion failed.

**COUNCIL LUNCH BREAK**

Chairman Moore reconvened the meeting with the next item on the agenda.

5. **DEQ Presentation**

Mr. Corra gave the Council an update on the status of the various divisions of the DEQ. He also presented information to the Council regarding coordination of Air and Land permits for small mines. Communication to the applicant is very important from the DEQ divisions. Sometimes they don’t understand some issues and can get clarification from the DEQ. Then they are willing to work with them and not have to appear before the Council.

Chairman Moore asked the Council if they had any questions for Mr. Corra regarding the small mine permits. Ms. Flitner asked Mr. Corra when their first opportunity would be to try the process between the two divisions. Mr. Corra was unsure. Ms. Flitner asked if the DEQ is prepared in case there should be an application come in. He concurred that they were ready. Mr. Morris asked if the mediations would improve the relationship between the landowners and DEQ to stop a contested case from happening before the EQC. Mr. Corra felt that their divisions are doing their best to accommodate the landowners and present different scenarios to improve the relationships. He feels that their agency does not need a mediator.

Chairman Moore asked the Council if they had any further questions for John Corra. Mr. Morris asked Mr. Corra if his agency was short of people. Mr. Corra felt that they are doing O.K. He stated that there are vacancies that are hard to fill because of the pay that the applicants require.
Engineer positions are hard to fill.

Chairman Moore asked for a motion to recess the meeting and go into Executive Session for Administrative matters. Mr. Boal made the motion. Ms. Flitner seconded the motion. Chairman Moore called for a vote. The motion passed unanimously.

**COUNCIL CONVENED TO EXECUTIVE SESSION**

Chairman Moore reconvened the meeting. Mr. Boal made a motion to recess the Executive Session so it can be later reconvened via conference call to be arranged by the chairman if that’s provided for by the statute. Mr. Gifford seconded the motion. Chairman Moore asked for discussion on the motion. Hearing none, Chairman Moore called for a vote. The motion passed.

Chairman Moore adjourned the meeting.

RESPECTFULLY SUBMITTED

Environmental Quality Council

Dennis Boal, Secretary

APPROVED BY:

Richard C. Moore, P.E., Chairman

Date