

FEB 01 2008

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Terri A. Lorenzon, Director
Environmental Quality Council

In the Matter of the Appeal)
Of the Revocation of) Docket No. 07-2601
Permit No. CT-1352B)
Two Elk Power Plant)

**PETITIONER TWO ELK GENERATION PARTNERS, LIMITED PARTNERSHIP'S
OPPOSITION TO SIERRA CLUB/PRBRC'S MOTION TO INTERVENE AND
PETITION FOR RECONSIDERATION**

Petitioner Two Elk Generation Partners, Limited Partnership ("TEGP"), by and through its undersigned counsel of record, hereby submits its Opposition to Sierra Club and Powder River Basin Resource Council's "Motion to Intervene and Petition for Reconsideration and Vacation of EQC Order Regarding Discontinued Construction of Two Elk Plant."

INTRODUCTION

Sierra Club and Powder River Basin Resource Council ("Sierra Club/PRBRC") cannot intervene in a matter that no longer exists, nor can they resurrect the right to intervene by seeking rehearing on a matter to which they were not a party. Sierra Club/PRBRC made no effort to participate in the case before it was settled and dismissed, and have not established good cause for their failure to do so. They do not meet the standards for intervening under the Department of Environmental Quality ("DEQ") Rules of Practice and Procedure ("R.P.P.") for proceedings before the Environmental Quality Council ("Council" or "EQC"), or under Rule 24(a) of the Wyoming Rules of Civil Procedure. As non-parties, Sierra Club/PRBRC are not entitled to seek rehearing. Moreover, they have identified no new issue raised by the decision of the Council that would be adequate to justify rehearing. For all of these reasons, Sierra Club/PRBRC's Motion and Petition should be denied.

BACKGROUND

This resolved case relates to the application of condition No. 4 under permit CT-1352B which provides that “[i]f construction or modification does not commence within 24 months of the date of the Council’s Order approving the stipulated modification of this permit or construction is discontinued for a period of 24 months or more, in accordance with WAQSR Chapter 6, Section 2(h), the permit will become invalid.” On August 22, 2007, the DEQ Air Quality Division Administrator, Mr. David A. Finley, issued TEGP a letter concluding that “[b]ecause construction has been discontinued for a period of 24 months or more, DEQ/AQD Construction Permit No. CT-1352B has become invalid by operation of permit condition No. 4 and Chapter 6 Section 2(h) of the WAQSR.”

TEGP notified the DEQ that it disputed Administrator Finley’s conclusion, and subsequently offered to provide documents and information to demonstrate construction of the Two Elk Plant had not been discontinued for a period of 24 months or more. Discussions between TEGP and DEQ ensued during which DEQ reviewed TEGP’s confidential business information and other documentation concerning the construction activities at the site.

In order to preserve its appeal rights while these discussions were ongoing, TEGP filed, on October 22, 2007, a Petition for Review and Request for Immediate Stay seeking a stay of the effect of Administrator Finley’s August 22, 2007 letter. On November 6, 2007, the Council entered an Order setting a hearing on TEGP’s Motion for Stay at its November 28, 2007 meeting. The Petition for Review was available to the public on the Council’s website and the hearing was listed as an agenda item for the Council’s November 28, 2007 meeting. PRBRC received actual notice of the hearing by mail.

While TEGP's Petition was pending, TEGP continued to provide documents and information to DEQ, as an effort to settle the dispute and resolve the appeal. After reviewing these materials, DEQ agreed that TEGP continued construction of the Two Elk Plant, as required by the Permit. DEQ rescinded the August 22, 2007 letter based on its finding that TEGP has not discontinued construction on the Two Elk Plant for a period of 24 months or more, consistent with permit CT-1352B Condition No. 4. On November 21, 2007, TEGP and DEQ filed a Joint Motion for Dismissal of Appeal, Approval of Settlement Stipulation and Request for Setting of Hearing. The EQC held a hearing in the matter on November 28, 2007. On December 3, 2007, the Council entered its "Order Approving Parties' Joint Stipulated Settlement, and Dismissing TEGP's Appeal, and Approving Withdrawal of August 22 Letter."

On December 20, 2007, Sierra Club/PRBRC filed their "Motion to Intervene and Petition for Reconsideration and Vacation of EQC Order Regarding Discontinued Construction of Two Elk Plant." Neither the Sierra Club nor the Powder River Basin Resource Council were parties to the proceeding. Their first effort to participate in the proceedings came in their December 20, 2007 Motion and Petition.

ARGUMENT

A. SIERRA CLUB/PRBRC SHOULD NOT BE PERMITTED TO INTERVENE AS THEY DO NOT MEET THE REQUIREMENTS FOR INTERVENTION AS OF RIGHT UNDER WYO. R. CIV. P. 24(a)

All proceedings before the Council are governed by the requirements of the Wyoming Administrative Procedures Act ("WAPA"). *See* WYO. STAT. ANN. § 35-11-112(f) ("All proceedings of the council shall be conducted in accordance with the Wyoming Administrative Procedures Act."). Under the WAPA, only a person or agency named or admitted as a party, or

properly seeking and entitled as of right to be admitted as a party, may participate in a proceeding. *Id.* § 16-3-101(b)(vi). The Council may allow a person to intervene only if that person qualifies for intervention as of right pursuant to WYO. R. CIV. P. 24(a). *See* II R.P.P. § 14(a) (“The Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with the laws of the state and these rules shall apply to matters before the Council.”); *Amoco Prod. Co. v. Dep’t of Revenue*, 2004 WY 89 ¶¶13-16, 94 P.3d 430, 436-37, ¶¶13-16 (Wyo. 2004) (WAPA requires that a person seeking intervention as of right in a contested case before Wyoming Board of Equalization must meet requirements dictated by WYO. R. CIV. P. 24(a), not the less rigorous requirements of the Board’s rule).

Rule 24(a) provides:

(a) Intervention of right. – Upon timely application anyone shall be permitted to intervene in an action:

- (1) When a statute confers an unconditional right to intervene; or
- (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant’s ability to protect that interest, unless the applicant’s interest is adequately represented by existing parties.

WYO. R. CIV. P. 24(a). Sierra Club/PRBRC do not invoke any statute conferring an unconditional right to intervene in this proceeding and none exists. Accordingly, intervention is not proper under Rule 24(a)(1).

Under Rule 24(a)(2), a party may intervene as of right in an ongoing action if it satisfies four conditions: (1) the motion is timely filed; (2) the applicant claims an interest related to the property or transaction which is the subject of the action; (3) the applicant is so situated that the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to

protect that interest; and (4) the interest is not adequately represented by existing parties. WYO. R. CIV. P. 24(a)(2); *State Farm Mut. Auto. Ins. Co. v. Colley*, 871 P.2d 191, 194 (Wyo. 1994). An applicant who fails to meet any one of these conditions is not permitted to intervene as of right under Rule 24(a)(2). *Id.* (citing *Platte County Sch. Dist. No. 1 v. Basin Elec. Power Coop.*, 638 P.2d 1276 1280 (Wyo. 1982)). While Sierra Club/PRBRC can meet none of these requirements, their failure to make a timely request to intervene alone is determinative under Rule 24, as well as the Council's rules.

1. Sierra Club/PRBRC's Application to Intervene is Not Timely

Four factors are analyzed in determining whether an application to intervene under Rule 24(a)(2) is timely: (1) the length of time the applicant for intervention knew or reasonably should have known of its interest in the case before the application for leave to intervene was filed; (2) the extent of the prejudice that the existing parties to the litigation may suffer as a result of the applicant's failure to seek intervention as soon as the applicant actually knew or reasonably should have known of its interest in the case; (3) the extent of the prejudice that the applicant for intervention may suffer if the application is denied; and (4) the existence of unusual circumstances militating either for or against a determination that the application is timely. *State Farm Mut. Auto. Ins. Co.*, 871 P.2d at 197.

These factors all weigh against Sierra Club/PRBRC's Motion. Sierra Club/PRBRC did not seek leave to intervene until December 20, 2007, more than three weeks after the hearing in the proceeding, and nearly two months after the case was initially docketed with the Council. Sierra Club/PRBRC either knew or reasonably should have known of their interest long before their application was filed. On approximately November 5, 2007, the Council gave advance

public notice of the November 28, 2007 hearing in this proceeding on its website and by email and U.S. Mail to individuals on its routine distribution list. Powder River Basin Resource Council is included on the mail distribution list for Council notices; it accordingly received actual notice of the hearing approximately three weeks before the hearing was scheduled to occur. Exhibit A, Environmental Quality Council Hearing Notice Distribution List. The notice specified that the hearing was to address TEGP's request for immediate stay. Exhibit B, Environmental Quality Council November 28, 2007 Hearing Agenda.¹ Because DEQ and TEGP reached a settlement agreement prior to the date of the hearing, however, the parties used the hearing as an opportunity to present their agreement to the Council and address the Council members' questions. TEGP's Petition for Review and Request for Immediate Stay was available to the public on the Council's website prior to the hearing, and was sufficient to alert members of the public to the matters at issue in the proceeding. Nothing prevented Sierra Club/PRBRC from appearing and petitioning for leave to intervene at the November 28, 2007 hearing to protect whatever interests they believed may have been implicated by action of the Council in this matter.

The existing parties to the litigation would be prejudiced if the Motion to Intervene were granted. Reopening this matter for the benefit of hearing Sierra Club/PRBRC's tardy complaints would upset the parties' expectations and interests in the settled outcome of the proceeding. There is a strong public policy in Wyoming that favors compromises and the finality of settlements. *See, e.g., Haderlie v. Sondgeroth*, 866 P.2d 703 (Wyo.1993) (citing *Hursh Agency, Inc. v. Wigwam Homes, Inc.*, 664 P.2d 27 (Wyo.1983); *Coulter, Inc. v. Allen*, 624 P.2d 1199

¹ An amended agenda with a revised location for the hearing was distributed on approximately November 9, 2007. Exhibit B.

(Wyo.1981)). Current Council practice also encourages settlements and parties would have less incentive to resolve cases if they knew that outside parties could come in after the fact and question the solution. Intervention after adjudication is “too late, barring extraordinary circumstances.” *Curless v. Curless*, 708 P.2d 426, 432 (Wyo. 1994); *see also American Family Ins. Co. v. Bowen*, 959 P.2d 1199 (Wyo. 1998).

Permitting Sierra Club/PRBRC to intervene at this stage, after the proceedings have been terminated through an extensively negotiated agreement to settle, would flout that public policy and greatly prejudice both TEGP and DEQ, who will have to incur additional costs in continued litigation over a matter that they consider finally resolved. TEGP and DEQ have invested time and resources in reaching a settlement and it will be all for naught, if the matter is reopened. This prejudice outweighs any prejudice or risk of prejudice to the proposed intervenors. *See American Family*, 959 P.2d at 1202 (insurance company’s loss based on default judgment did not justify post entry intervention).

On the other hand, Sierra Club/PRBRC have taken other steps to protect their interests and have filed in the First Judicial District Court of the State of Wyoming in and for Laramie County. *Sierra Club v. Wyoming Env'tl. Quality Council*, No. 171-041 (Dist. Ct. Laramie County, Wyo., Petition filed Dec. 20, 2007). Sierra Club/PRBRC have not offered any explanation as to why they are prejudiced in this action when they have already availed themselves of the opportunity to seek judicial review in state court, nor have the proposed intervenors identified any unusual circumstances to suggest that their motion is timely.

Finally, the DEQ Rules of Practice and Procedure specifically prohibit petitions for leave to intervene after the date of a hearing “except for good cause shown.” II R.P.P. § 7. Sierra

Club/PRBRC have not shown good cause for their failure to petition to intervene prior to or at the November 28, 2007 hearing. All of these factors weigh in favor of a finding that Sierra Club/PRBRC's application to intervene is not timely.

2. Sierra Club/PRBRC Do Not Have a Significantly Protectable Interest in the Subject of the Litigation

A party seeking to intervene as of right must have a "significantly protectable interest" in the subject of the litigation. *State Farm Mut. Auto. Ins. Co.*, 871 P.2d at 194 (citing *Donaldson v. United States*, 400 U.S. 517, 531 (1971)); *Platte County Sch. Dist. No. 1*, 638 P.2d at 1279. A "significantly protectable interest" is distinguished from one which is "merely contingent" or similar to the interest of any member of the public at large. *State Farm Mut. Auto Ins. Co.*, 871 P.2d at 194 (citing *Platte County Sch. Dist. No. 1*, 638 P.2d at 1279).

Sierra Club/PRBRC assert that their interest in this proceeding is in ensuring TEGP's full compliance with its legal obligations, and that TEGP's compliance with the Environmental Quality Act and related regulations will further their interest in protecting the air quality of Wyoming. Motion ¶ 6. Those are not sufficiently specific and defined interests to warrant intervention as of right. Neither Sierra Club nor Powder River Basin Resource Council has demonstrated a legally protectable interest in the proceeding, and neither has demonstrated a nexus between their claimed interests and the subject of the litigation that is distinguishable from the interests of the general public or the DEQ.

Additionally, because Sierra Club/PRBRC have failed to plead even "general factual allegations of injury" they do not satisfy the threshold showing of standing to participate in this case. *Sierra Club v. Env'tl. Prot. Agency*, 292 F.3d 895, 898 (D.C. Cir. 2002) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Under the DEQ Rules of Practice and Procedure, the Council may grant leave to intervene in a proceeding only to a person who is “adversely affected” by the action, or has a right under the Wyoming Environmental Quality Act or the Administrative Procedure Act (*i.e.*, a person who is “aggrieved by” the Council’s decision, WYO. STAT. ANN. § 16-3-114; WYO. R. APP. P. 12). II R.P.P. § 7. “An aggrieved or adversely affected person is one who has a legally recognizable interest in that which will be affected by the action. A potential litigant must show injury or potential injury by ‘alleg[ing] a perceptible, rather than a speculative, harm resulting from the agency action.’” *Roe v. Bd. of County Comm’rs, Campbell County*, 997 P.2d 1021, 1023 (Wyo. 2000) (quoting *Foster’s, Inc. v. City of Laramie*, 718 P.2d 868, 872 (Wyo. 1986)). Moreover, “The interest which will sustain a right to appeal must generally be substantial, immediate, and pecuniary. A future, contingent, or merely speculative interest is ordinarily not sufficient.” *Id.* (quoting *L Slash X Cattle Co. v. Texaco, Inc.*, 623 P.2d 764, 769 (Wyo. 1981)).

Sierra Club/PRBRC has made no showing as to the “aggrieved” or “adversely affected” requirement for intervention in a proceeding before the Council. They have not alleged a “substantial, immediate, and pecuniary” interest or even a “perceptible, rather than speculative, harm” to their asserted interests. Indeed, they have failed to present any specific facts to demonstrate how they or how any of their members have been injured by the Council’s decision. A generalized complaint about whether the administrative process was correctly followed is insufficient to satisfy the standard if it fails to assert specifically how they have been aggrieved by any alleged deviation from this process or by the final agency action. *See id.*

Finally, even if the Council were to find that Sierra Club/PRBRC had asserted a significantly protectable interest, Sierra Club/PRBRC have made no allegation as to how their

interest is harmed by the Council's decision to approve the settlement agreement between DEQ and TEGP, in light of the more stringent emission controls for the Two Elk Plant under the agreement. The settlement agreement, which is publicly available, references TEGP's agreement to apply for modification of Permit CT-1352B. That application, which is also publicly available, proposes to lower the Two Elk Plant's emissions of SO₂, NO_x and filterable PM₁₀. Thus, under the settlement agreement, TEGP has applied to significantly lower the emissions limits for the Two Elk Plant—resulting in corresponding reductions in potential impacts to Wyoming's air quality and any “harm” to Sierra Club/PRBRC's interests.

3. Sierra Club/PRBRC's Interests are Adequately Represented by the DEQ

As the agency charged by statute with protecting the environment and public health through enforcement of the Wyoming Environmental Quality Act and related regulations, DEQ adequately represents Sierra Club/PRBRC's interests in this proceeding. *See* WYO. STAT. ANN. § 35-11-109(a)(i). Sierra Club/PRBRC's interests in protecting the air quality of Wyoming and ensuring TEGP's compliance with law are not unique, but rather are shared by the general public—and the public interest is represented by DEQ. Because Sierra Club/PRBRC's interests are aligned with those of DEQ, the agency is presumed adequately to represent Sierra Club/PRBRC's interests. *San Juan County v. United States*, 503 F.3d 1163, 1204-1207 (10th Cir. 2007) (en banc) (citing *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Eng'rs*, 101 F.3d 503, 508 (7th Cir. 1996), *Maine v. Director, U.S. Fish and Wildlife Service*, 262 F.3d 13, 18-20 (1st Cir. 2001)) (holding that environmental organization failed to overcome presumption that federal agencies would adequately represent its interest).

Because Sierra Club/PRBRC cannot satisfy the requirements to intervene in this proceeding under the Wyoming Rules of Civil Procedure and the DEQ Rules of Practice and Procedure, their Motion to Intervene should be denied.

B. THE PETITION DOES NOT IDENTIFY NEW ISSUES RAISED BY THE COUNCIL'S DECISION

The DEQ Rules of Practice and Procedure provide for rehearing by the Council, upon the request of a party, so long as the petition for rehearing is “confined to new questions raised by the decision and upon which petitioner had no opportunity to argue before the Council.” IV R.P.P. § 1. At this time, Sierra Club/PRBRC are not parties to this proceeding, and are not entitled to seek rehearing.

On November 28, 2007, the Council conducted a hearing in this matter, at which DEQ and TEGP presented their settlement agreement for approval by the Council, in accordance with the DEQ rules. See I R.P.P. § 11 (authorizing informal dispositions of hearings by settlement “upon approval of the Council”). The Council voted unanimously to approve the settlement agreement and the withdrawal of DEQ’s August 22, 2007 letter to TEGP, and to dismiss TEGP’s appeal. On December 3, 2007, the Council issued a written Order confirming that decision.

Sierra Club/PRBRC have not identified “new questions raised by the decision,” as required under DEQ Rules of Practice and Procedure Chapter IV, Section 1(b). The issue they style as a new question, “whether TEGP did not discontinue construction for a period of 24 months or more,” was before the Council when it decided to approve the settlement agreement between DEQ and TEGP and dismiss this action.

At the hearing, DEQ explained the basis for its conclusion that the August 22, 2007 letter

to TEGP should be withdrawn because TEGP had not discontinued construction at the Two Elk Plant for 24 months or more. TEGP submitted a demonstrative exhibit that illustrated the timing of construction activities at the project site, and showed that those activities had never been discontinued for a period of 24 months or more. Exhibit C, TEGP's Timeline Exhibit Presented at November 28, 2007 Hearing.

The Council could not have approved the withdrawal of DEQ's August 22, 2007 letter to TEGP if it had not agreed that, since the date on which construction commenced (before May 29, 2007), construction at the Two Elk Plant had never been discontinued for a period of 24 months or more. Accordingly, this question was addressed by the Council's December 3, 2007 Order, and as such it is not a "new question" raised by the Order itself.

Because Sierra Club/PRBRC have not identified a new issue raised by the Council's December 3, 2007 Order, the Petition for Reconsideration/Rehearing should be denied.

C. THE STATUS OF SIERRA CLUB/PRBRC'S PUBLIC RECORDS REQUEST DOES NOT PROVIDE A BASIS FOR REHEARING OF THIS MATTER

Wyoming's Public Records Act, WYO. STAT. ANN. §§ 16-4-201 *et seq.*, specifies the procedure by which members of the public may obtain access to the records of administrative activities. Sierra Club initiated a public records request relating to this matter on November 29, 2007. On information and belief, DEQ is engaged in the complex process of compiling and reviewing the record for this matter in response to Sierra Club's request. The record includes numerous documents provided to DEQ by TEGP and designated by TEGP as containing "Confidential Business Information," including trade secrets, privileged information, and confidential commercial and financial information, within the meaning of WYO. STAT. ANN. §§

16-4-203(d)(v) and 35-11-1101. By letter to the Attorney General's Office dated December 14, 2007, counsel for TEGP requested that DEQ deny public inspection of TEGP's confidential business information, in accordance with WYO. STAT. ANN. §§ 16-4-203(d)(v) and 35-11-1101.

If DEQ denies access to any part of the requested record in this matter, Sierra Club may request a written statement of the grounds for the denial, and may apply to the district court for an order directing DEQ to show cause why inspection should not be permitted. WYO. STAT. ANN. § 16-4-203(e) & (f).

Sierra Club's public records request is a matter independent of this proceeding. The Council is not required to wait until a public records request is initiated, or until DEQ completes its response to a request, before making a decision in a matter. Thus, the fact that Sierra Club/PRBRC have not had an opportunity to review the full record in this matter does not form a basis for rehearing.

The record in this proceeding would be available to Sierra Club/PRBRC in a district court administrative review proceeding. Further, the district court, rather than the Council, has the authority to issue and enforce protective orders relating to TEGP's confidential business information, should such orders be appropriate.

Because Sierra Club/PRBRC have not satisfied the standard for rehearing of a matter by the Council, the district court is available to Sierra Club/PRBRC as a forum in which to seek review of the Council's decision, and the status of Sierra Club/PRBRC's public records request does not provide a basis for rehearing of the matter, TEGP respectfully requests that the Council deny Sierra Club/PRBRC's Petition for Reconsideration/Rehearing.

CONCLUSION

For the foregoing reasons, TEGP requests that the Council deny both Sierra Club/PRBRC's Motion to Intervene and Sierra Club/PRBRC's Petition for Reconsideration.

Respectfully submitted this 1st day of February 2008.

TWO ELK GENERATION PARTNERS

By: Mary A. Throne

Mary A. Throne
John A. Coppede
Hickey & Evans, LLP
1800 Carey Avenue, Suite 700
Cheyenne, WY 82001
Ph. (307) 634-1525
Fx. (307) 638-7335

Michael C. Theis
Danielle DiMauro
Hogan & Hartson LLP
1200 Seventeenth St., Suite 1500
Denver, CO 80202

Dennis L. Arfmann
Hogan & Hartson LLP
1470 Walnut St., Suite 200
Boulder, CO 80302

TWO ELK GENERATION PARTNERS

CERTIFICATE OF SERVICE

On this 3rd day of February 2008, in accordance with the requirements of Chapter I, Section 3(b) of the Department of Environmental Quality Rules of Practice and Procedure and Rule 5 of the Wyoming Rules of Civil Procedure, I caused the foregoing TWO ELK GENERATION PARTNERS, LIMITED PARTNERSHIP'S OPPOSITION TO SIERRA CLUB/PRBRC'S MOTION TO INTERVENE AND PETITION FOR RECONSIDERATION to be served by registered mail, return receipt requested, and electronic mail to:

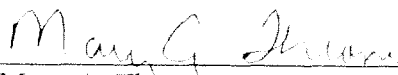
John Corra, Director
DEQ
122 West 25th Street
Herschler Building, 2nd Floor East
Cheyenne, WY 82002
deqwyo@state.wy.us

Nancy Vehr
Assistant Attorney General
Attorney General's Office
123 Capitol
200 West 24th Street
Cheyenne, WY 82002
nvehr@state.wy.us

David Finley, Administrator
DEQ Air Quality Division
122 West 25th Street
Herschler Building, 2nd Floor East
Cheyenne, WY 82002
dfinle@state.wy.us

Reed Zars
Attorney at Law
910 Kearney Street
Laramie, WY 82070
rzars@lariat.org

Richard C. Moore, Chairman
Environmental Quality Council
122 West 25th Street
Herschler Building, Room 1714
Cheyenne, WY 82002
Email c/o Terri Lorenzon, EQC
Director/Attorney, tloren@state.wy.us



Mary A. Throne
Hickey & Evans

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

In the Matter of the Appeal)
Of the Revocation of)
Permit No. CT-1352B)
Two Elk Power Plant) Docket No. 07-2601

ORDER

This matter is before the Council on Two Elk Generation Partners, Limited Partnership's Opposition to Sierra Club/PRBRC's Motion to Intervene and Petition for Reconsideration. Having reviewed the arguments, and being fully advised in the premises, the Council hereby DENIES the Motion to Intervene and DENIES the Petition for Rehearing.

Dated this ____ day of _____, 2008.

Presiding Officer
Environmental Quality Council
122 West 25th Street
Herschler Building, Room 1714
Cheyenne, WY 82002

DiMauro, Danielle

From: Kim McGee [KMCGEE@state.wy.us]
Sent: Thursday, December 06, 2007 11:38 AM
To: DiMauro, Danielle
Subject: RE: Two Elk 07-2601

Attachments: 2007 Agenda List.wpd; 2007 Agenda Email list.pdf



2007 Agenda
List.wpd (8 KB)



2007 Agenda Email
list.pdf (1,...

Attached is the mailing list of the public that has stated they wanted to be notified of any meetings. We also e-mail all DEQ employees, plus the field offices within the state of Wyoming. I have also attached the email list of names and e-mail addresses. This pretty much covers who I sent notifications to.

>>> "DiMauro, Danielle" <DDiMauro@HHLAW.com> 12/6/2007 9:52 AM >>>
Hello Kim,

Thanks for your response, and for the information about how you notify the public of meetings. Could you please provide me with a copy of the distribution list for the notices (the agenda list you referenced)?

Also, we received a stamped copy of the Order in the mail yesterday (stamped 12/3/07), so no need to mail another.

Thank you,
Danielle DiMauro

Danielle DiMauro
Hogan & Hartson LLP
ddimauro@hhlaw.com

-----Original Message-----

From: Kim McGee [mailto:KMCGEE@state.wy.us]
Sent: Thursday, December 06, 2007 9:14 AM
To: DiMauro, Danielle
Subject: Re: Two Elk 07-2601

Hi Danielle! My name is Kim McGee. I am the Executive Assistant for the EQC. Joe has sent me your message regarding the information you need for Two Elk.

I have an agenda list that is used every time we notify the public of a meeting. Also, I notify the local newspaper in the vicinity of the meeting and they put an announcement in their calendar page of their newspaper. Notification is also put on our web-site on the homepage calendar. It is pretty much open to the public, as all our meetings are.

>>> "DiMauro, Danielle" <DDiMauro@HHLAW.com> 12/5/2007 10:15 AM >>>
Joe:

As we discussed, on behalf of Two Elk Generation Partners, I am requesting a copy of the distribution list for the public notice of the hearing in this matter, held on November 28, 2007.

With respect to the missing file stamp date for the Order, please note that the 12/3/2007 date does appear in the docket listing for the Order on the Council's website. Accordingly, it would be appropriate for the Order to be stamped with that date, as that is the date the signed Order was publicly posted.

Thank you for your assistance.

Regards,
Danielle DiMauro

Danielle DiMauro, ATTORNEY AT LAW
HOGAN & HARTSON LLP
One Tabor Center, Suite 1500, 1200 Seventeenth Street, Denver, CO 80202 direct +
1.303.454.2558 | tel +1.303.899.7300 | fax +1.303.899.7333 ddimauro@hhlaw.com
<mailto:ddimauro@hhlaw.com> | <http://www.hhlaw.com> <<http://www.hhlaw.com/>>

This electronic message transmission contains information from this law firm which may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited.

If you have received this electronic transmission in error, please notify us by telephone (+1-202-637-5600) or by electronic mail (PostMaster@HHLAW.COM) immediately.

Name: Agenda Email
E-Mail Address:

Name: Agenda List
E-Mail Address:

Name: American Colloid Company
E-Mail Address:

Name: Arch Coal
E-Mail Address:

Name: B Green
E-Mail Address: Greenb@kenegy.com

Name: Barlow, Michele
E-Mail Address: mbarlow@lariat.org

Name: Barron, Joan
E-Mail Address: Barron@trib.com

Name: Biodiversity Associate
E-Mail Address:

Name: Black Hills Power and Light
E-Mail Address:

Name: Bridger Coal
E-Mail Address:

Name: Brown, Matt
E-Mail Address: mbrown@ap.org

Name: Buchanan, Monte
E-Mail Address: mbuchanan@mountaincement.com

Name: Bucher, Lyndon
E-Mail Address: Lyndon.Bucher@colloid.com

Name: Burron, Keith
E-Mail Address: kburron@associatedlegal.com

Name: Casper Star
E-Mail Address:

Name: Clark, R
E-Mail Address: Raclark@archcoal.com

Name: Cogema Mining Inc
E-Mail Address:

Name: Corson, Celia
E-Mail Address: toltecbaggs@yahoo.com

Name: Davis & Cannon
E-Mail Address:

Name: Demshar, Carl
E-Mail Address: Carl_Demshar@FMC.com

Name: Donna L. Wichers
E-Mail Address: dwichers@cogema-mining.com

Name: Environmental Assessment Services Inc.
E-Mail Address:

Name: Fcarl
E-Mail Address: Fcarl@bhgen.com

Name: Friends of Bessemer Bend So.
E-Mail Address:

Name: Galey, Frank
E-Mail Address: fgaley@uwyo.edu

Name: Geraldine Minick
E-Mail Address: publisher@energy-reporter.com

Name: Gifford, Mark
E-Mail Address: mwgiff@wyoming.com

Name: Gillette News
E-Mail Address:

Name: Gow, Roland
E-Mail Address: Rolandg@questar.com

Name: Hall, Britta
E-Mail Address: britta_hall@blm.gov

Name: Hargrove, Brantley
E-Mail Address: bhargrove@gillettenewsrecord.net

Name: Harris, Ed
E-Mail Address: EHARRIS@hollandhart.com

Name: Harris, Norm
E-Mail Address: norm.hargis@pacifcorp.com

Name: Hathaway Speight & Kunz LLC
E-Mail Address:

Name: Hedrick, Kirby
E-Mail Address: KIRBYHEDRICK@cs.com

Name: Hilding, Nancy
E-Mail Address: nhilshat@rapidnet.com

Name: Holand & Hart
E-Mail Address:

Name: Jennifer Clymer
E-Mail Address: JCLYME@state.wy.us

Name: Jozwik, Darryl
E-Mail Address: DJozwik@archcoal.com

Name: Kennecott Energy
E-Mail Address:

Name: Kessler, Jeff
E-Mail Address: biodiversity@mindspring.com

Name: Killean, Cathy
E-Mail Address: CathyK@tnb.com

Name: kmbrown@qwest.net
E-Mail Address: kmbrown@qwest.net

Name: Kunz, Brent
E-Mail Address: bkunz@hkwyolaw.com

Name: Loomis, Marion
E-Mail Address: WMA@vcn.com

Name: Malli, Don
E-Mail Address: DandBMalli@rangeweb.net

Name: Mary Throne <MThrone@hickeyevans.com>
E-Mail Address: mthrone@hickeyevans.com

Name: McKenzie, Don
E-Mail Address: DMCKEN@state.wy.us

Name: McPherson, J.R.
E-Mail Address: jrmperson@duke-energy.com

Name: Missouri Basin Power Project
E-Mail Address:

Name: Molvar, Erik
E-Mail Address: erik@voiceforthewild.org

Name: msabec@wpanet.net
E-Mail Address: msabec@wpanet.net

Name: New agenda email list
E-Mail Address:

Name: Newman, Craig
E-Mail Address: cmannew@aol.com

Name: nkramer@wpdn.net
E-Mail Address: nkramer@WPDN.net

Name: Pathfinder - Cogema Mining Inc
E-Mail Address:

Name: Paulh
E-Mail Address: paulh@trib.com

Name: Peak Environmental
E-Mail Address: myra@peakenvironmental.com

Name: Power Resources Inc.
E-Mail Address:

Name: Questar Corp.
E-Mail Address:

Name: RAG Coal West
E-Mail Address:

Name: Rankin, Adam
E-Mail Address: News@GilletteNewsRecord.com

Name: Rena Delbridge
E-Mail Address: Budgetphotos@netcommander.com

Name: rep8
E-Mail Address: rep8@wyomingnews.com

Name: Roy Liedtke
E-Mail Address: roy.liedtke@kennecottenergy.com

Name: Schultz, Su
E-Mail Address: USCHUL@state.wy.us

Name: Searle, F. David
E-Mail Address: fdsearle@marathonoil.com

Name: Spezzano, Christy
E-Mail Address: CSPEZZ@state.wy.us

Name: Sue Petrie
E-Mail Address: SPETRI@state.wy.us

Name: Suzanne Stevenson
E-Mail Address: Stevenson.Suzanne@EPA.gov

Name: Taylor Environmental
E-Mail Address: taylorenvironmental@alluretech.net

Name: The Douglas Budget
E-Mail Address:

Name: Wolf, Kimberly
E-Mail Address: wolfk@kenergy.com

Name: Wyoming Mining Assoc.
E-Mail Address:

Name: Wyoming Outdoor Council
E-Mail Address:

2007 AGENDA ADDRESSES

Antelope Coal Company
Attn: Kyle J. Wendtland
Caller Box 3008
Gillette, WY 82717-3008 X

Biodiversity Conservation Alliance
Attn: Suzanne Lewis
P. O. Box 1512
Laramie, WY 82073 X

Double Eagle Petroleum
Attn: Steve Degenfelder
P. O. Box 766
Casper, WY 82602

Foundation Wyoming Land Company
Attn: Steven Laird
P. O. Box 3039
Gillette, WY 82717

Kent Connelly
Lincoln County Commission
925 Sage Avenue
Kemmerer, WY 83101 X

Dyno Nobel, Inc
Attn: Barbara L. Cabot
8305 Otto Road
Cheyenne, WY 82009 X

OCI, Wyoming, LP
Attn: Fred Parady, Manager, Env. Services
P. O. Box 513
Green River, WY 82935 X

Office of Surface Mining
Attn: Mark R. Humphrey
Casper Field Office
P.O. Box 11018
Casper, WY 82602 X

Pathfinder Mines Corp.
Attn: Tom Hardgrove
P. O. Box 730
Mills, WY 82644 X

Petroleum Association of Wyoming
Attn: John Robitaille
951 Werner Ct., Suite 100
Casper, WY 82601 X

Power Resources
Attn: Steve Collings
141 Union Blvd., Suite 330
Lakewood, CO 80228 X

Power Resources, Inc.
Attn: Bill Kearney
P. O. Box 1210
Glenrock, WY 82637

Powder River Basin Resource Council
Attn: Jill Morrison
934 North Main Street
Sheridan, WY 82801 X

Mr. Nick J. Bettas
Pittsburg & Midway Coal Mining Company
Kemmerer Mine
P. O. Box 950
Kemmerer, WY 83101 X

Governor Dave Freudenthal
Governor's Office
124 State Capitol
Cheyenne, WY 82002

Attorney General Bruce Salzburg
123 State Capitol
Cheyenne, WY 82002

Maxine Weaver
Legislative Service Office
213 Capitol Building
Cheyenne, WY 82002

John Etchepare, Director
Wyoming Department of Agriculture
2219 Carey Avenue
Cheyenne, WY 82002 X

Nancy Vehr
Sr. Asst. Attorney General

John Burbridge
Sr. Asst. Attorney General

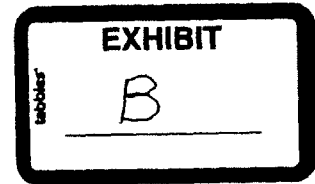
Mike Barrash
Sr. Asst. Attorney General

State Engineer
Herschler Bldg., 4th Floor East

Janie Nelson
WY Oil and Gas Conserv. Commission
P.O. Box 2640
Casper, WY 82602 X

All Agenda Case Participants

EQC Members



THE STATE OF WYOMING
ENVIRONMENTAL QUALITY COUNCIL

AGENDA

Dave Freudenthal,
Governor
Richard C. Moore, P.E.,
Chair
Sara Flitner,
Vice-Chair
Dennis Boal,
Secretary
Kirby Hedrick
Mark Gifford
John N. Morris
F. David Searle
Terri Lorenzon, Esq.
Director
Joe Girardin,
Paralegal
Kim McGee,
Executive Assistant

122 W. 25th, Herschler
Bldg., Rm. 1714,
Cheyenne, WY 82002
(307) 777-7170
FAX: (307) 777-6134
[http://deq.state.wy.us/
eqc](http://deq.state.wy.us/eqc)

The Environmental Quality Council is scheduled to hold a meeting at the Western Wyoming Community College, 2500 College Drive, Rm. #1302, Rock Springs, WY, on November 28, 2007 at 9:00 A.M.. The following is the Council's tentative agenda:

For updated meeting information, please contact the Council office at (307) 777-7170 or check the Council's website at: <http://deq.state.wy.us/eqc/>

MEETING

1. **Call to Order**
2. **Approval of Minutes**
 - A. May 10, 2007 Conference Call
 - B. August 29, 2007
3. **Decisions**
 - A. Designation of Area Known as Adobe Town as Rare or Uncommon Docket No. 07-1101
 - B. Two Elk Generating Partners—Docket No. 07-2601, Motion for Stay
4. **Old Business**
 - A. Transition of the EQC Executive Director/Attorney
 - B. Review of the Docket
 - a. Scheduling of Cases
5. **New Business**
 - A. 2009-2010 Budget
 - B. Use of Office of Administrative Hearings
6. **Dismissal**
 - A. Devon Energy—Docket No. 07-3800
Motion for Joint Stipulation of Dismissal of Appeal
7. **Review of Program**
 - A. Solid and Hazardous Waste, Chapters 1-14
Pending Rulemaking—Council Work Session

6. Schedule next EQC Meeting

Adjournment

In accordance with the Americans with Disabilities Act, special assistance or alternate formats will be made available upon request for individuals with disabilities



THE STATE OF WYOMING
ENVIRONMENTAL QUALITY COUNCIL

AMENDED AGENDA

Dave Freudenthal,
Governor
Richard C. Moore, P.E.,
Chair
Sara Flitner,
Vice-Chair
Dennis Boal,
Secretary
Kirby Hedrick
Mark Gifford
John N. Morris
F. David Searle
Terri Lorenzon, Esq.
Director
Joe Girardin,
Paralegal
Kim McGee,
Executive Assistant

122 W. 25th, Herschler
Bldg., Rm. 1714,
Cheyenne, WY 82002
(307) 777-7170
FAX: (307) 777-6134
[http://deq.state.wy.us/
eqc](http://deq.state.wy.us/eqc)

The Environmental Quality Council is scheduled to hold a meeting at the Sweetwater County School Administration Building Board Room, 3550 Foothill Blvd., Rock Springs, WY, on November 28, 2007 at 9:00 A.M.. The following is the Council's tentative agenda:

For updated meeting information, please contact the Council office at (307) 777-7170 or check the Council's website at: <http://deq.state.wy.us/eqc/>

MEETING

1. Call to Order

2. Approval of Minutes

- A. May 10, 2007 Conference Call
- B. August 29, 2007

3. Decisions

- A. Designation of Area Known as Adobe Town as Rare or Uncommon
Docket No. 07-1101
- B. Two Elk Generating Partners—Docket No. 07-2601, Motion for Stay

4. Old Business

- A. Transition of the EQC Executive Director/Attorney
- B. Review of the Docket
 - a. Scheduling of Cases

5. New Business

- A. 2009-2010 Budget
- B. Use of Office of Administrative Hearings

6. Dismissal

- A. Devon Energy—Docket No. 07-3800
Motion for Joint Stipulation of Dismissal of Appeal

7. Review of Program

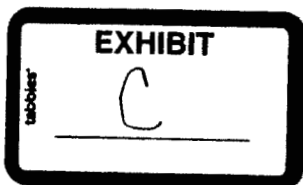
- A. Solid and Hazardous Waste, Chapters 1-14
Pending Rulemaking—Council Work Session

B. Proposed Changes to Pollution Prevention Program

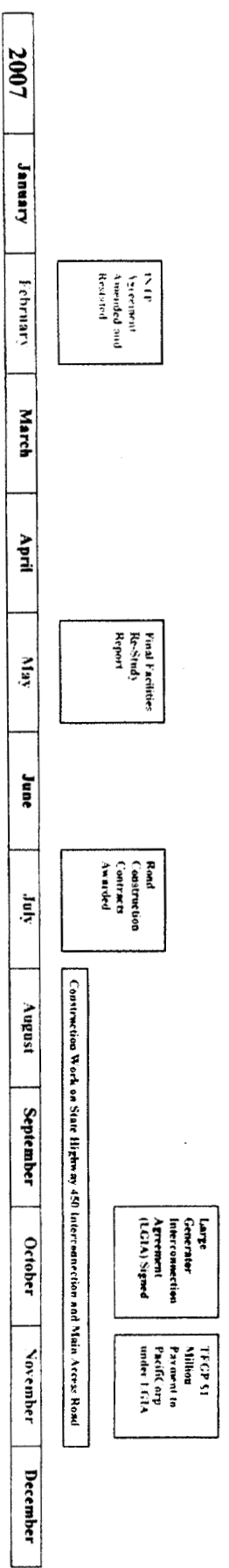
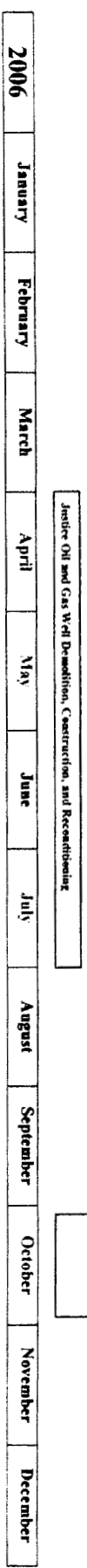
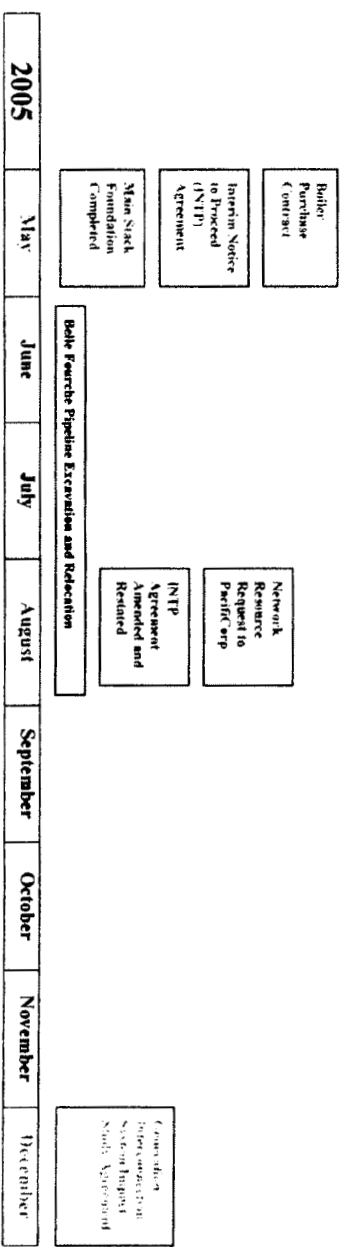
8. Schedule next EQC Meeting

Adjournment

In accordance with the Americans with Disabilities Act, special assistance or alternate formats will be made available upon request for individuals with disabilities



TWO ELK POWER PLANT – CONSTRUCTION TIMELINE 2005-2007



TWO ELK POWER PLANT –

Boiler
Purchase
Contract

Interim Notice
to Proceed
(INTP)
Agreement

Main Stack
Foundation
Completed

2005	May
-------------	------------

INTP Agreement
Amended and
Restated

DOT Highway
Interconnection
Permit

Justice Oil and Gas Well Demolition, Con

2006	January	February	March	April	May
-------------	----------------	-----------------	--------------	--------------	------------

INTP
Agreement
Amended and
Restated

Final Facilities
Re-Study
Report

2007	January	February	March	April	May
-------------	----------------	-----------------	--------------	--------------	------------

CONSTRUCTION TIMELINE 2005-2007

FILED

NOV 28 2007

Terri A. Lorenzon, Director
Environmental Quality Council

Network
Resource
Request to
PacifiCorp

INTP
Agreement
Amended and
Restated

Generation
Interconnection
System Impact
Study Agreement

Belle Fourche Pipeline Excavation and Relocation

June	July	August	September	October	November	December
------	------	--------	-----------	---------	----------	----------

Generation
Interconnection
System
Facilities Study
Agreement

INTP
Agreement
Amended and
Restated

Construction, and Reconditioning

June	July	August	September	October	November	December
------	------	--------	-----------	---------	----------	----------

Road
Construction
Contracts
Awarded

Large
Generator
Interconnection
Agreement
(LGIA) Signed

TEG P \$1
Million
Payment to
PacifiCorp
under LGIA

Construction Work on State Highway 450 Interconnection and Main Access Road

June	July	August	September	October	November	December
------	------	--------	-----------	---------	----------	----------