

SEP 27 2006

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL AND REVIEW OF)
THE DECISION REGARDING THE RECLASSIFICATION)
OF EIGHT MAIN STREAM DRAINAGES TO POWDER) Docket No. 05-3203
RIVER AND OTHER TRIBUTARIES IN THE)
POWDER RIVER BASIN, DATED DECEMBER 22, 2004)

DEPARTMENT OF ENVIRONMENTAL QUALITY'S CASE UPDATE

The Department of Environmental Quality (DEQ), Water Quality Division (WQD), by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, files its case update to the appeal and review of the reclassification of eight main stream drainages to the Powder River and other tributaries in the Powder River Basin and states to the Environmental Quality Council:

1. The DEQ is unaware of any activity in this case since depositions were taken on March 30, 2006.

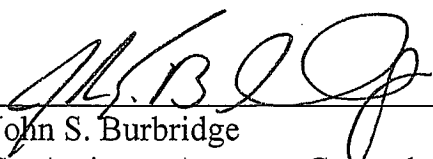
2. The DEQ contends that the reclassification of the eight main steam drainages to Powder River and other tributaries in the Powder River Basin is consistent with its rules and regulations, Chapter 1, Sections 4, 33, 34, and 35. It is also the DEQ's position that a use attainability analysis determines the level of aquatic life a stream drainage can sustain before being exposed to discharged produced water and/or man-made conditions. The reclassification of the subject drainages in this case from 3B to 4B and/or 4C is consistent with the lack of wet conditions supportive of aquatic life as contemplated by 3B

classifications. 4B and/or 4C classifications recognize that the drainages are ephemeral waters not capable of supporting aquatic life in their natural state.

3. The DEQ has completed its discovery in the above captioned matter but does not have information regarding the completion of discovery by the other parties in this case.

4. If a hearing is needed, the DEQ anticipates presenting its case in one half day.

DATED this 27th day of September, 2006



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CERTIFICATE OF SERVICE

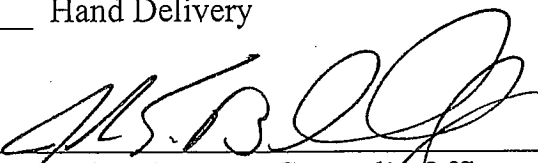
The undersigned hereby certifies that on the 27th day of September, 2006, the foregoing DEPARTMENT OF ENVIRONMENTAL QUALITY'S CASE UPDATE was served on the following individuals in the manner indicated:

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