

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

FILED

JUN 29 2007

IN THE MATTER OF THE APPEAL AND REVIEW OF)
THE DECISION REGARDING THE RECLASSIFICATION)
OF EIGHT MAIN STREAM DRAINAGES TO POWDER)
RIVER AND OTHER TRIBUTARIES IN THE)
POWDER RIVER BASIN, DATED DECEMBER 22, 2004)

Terri A. Lorenzon, Director
Environmental Quality Council
Docket No. 05-3203

**DEPARTMENT OF ENVIRONMENTAL QUALITY/WATER
QUALITY DIVISION'S PRE-HEARING MEMORANDUM**

The Department of Environmental Quality (DEQ)/ Water Quality Division (WQD) by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, hereby submits its Pre-Hearing Memorandum and states to the Environmental Quality Council (EQC) the following:

SUMMATION OF THE FACTS

The Division received a Use Attainability Analysis (UAA) petition from Kennedy Oil on September 23, 2004. The UAA requested that certain drainages in the Powder River Basin be reclassified as class 4 drainages from class 3 drainages. The Division approved the petition on December 22, 2004. That decision was appealed on February 24, 2005 by Petitioners. Petitioners allege that Pelloux Spring in Indian Creek, the South Fork of Four Mile Creek at the confluence of Goble Draw, the North Fork of Four Mile Creek, and Timber Draw are incorrectly changed from class 3 to class 4 because they are naturally supportive

of aquatic life. Petitioners allege those draws do not rely on coal bed methane water to be supportive of aquatic life and that the reclassification is not protective of the aquatic life already present in those draws.

The Division's position is that, in general, the reclassifications made as a result of the UAA are protective of aquatic life and accurately classify the drainages in their natural state. However, field observations made by the Division show that two draws, Goble and Timber should be left classified as 3 rather than class 4. All other drainage reclassifications should be left as class 4.

LEGAL ISSUE

Did the Division reclassify the eight main drainages to the Powder River in compliance with Chapter 3, Sections 3, 4, 33 and 34 of the Division's Rules and Regulations?

WITNESSES

WILL CALL:

Bill DiRienzo
Environmental Program Supervisor
Department of Environmental Quality
Water Quality Division
122 West 25th Street, 4th Floor West
Cheyenne, Wyoming 82002
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Mr. DiRienzo performed the oversight and review of Kennedy's UAA petition for the Division. DiRienzo is expected to testify regarding his knowledge of Kennedy's petition

and the actions he took in approving the petition. In addition, DiRienzo is expected to testify about field observations he made during June 2005 regarding the reclassification of Goble Draw, Timber Draw and Indian Creek. Based on those observations, DiRienzo may testify that at least two of the draws, Goble and Timber should remain classified as 3 even though the approved petition changes them to class 4.

MAY CALL:

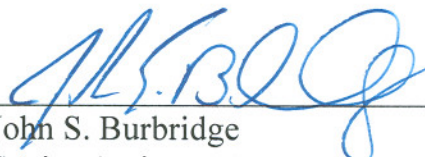
The Division may call any witness listed by the objectors in the above-captioned matter. In addition, the Division may call any witness needed for rebuttal testimony.

EXHIBITS

State's Exhibit 1: UAA petition from Kennedy

State's Exhibit 2: DiRienzo's report of June 2005 field observations

DATED this 29th day of June, 2007.



John S. Burbridge
Senior Assistant Attorney General
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CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that on this 29th day of June, 2007 the foregoing PRE-HEARING DISCLOSURES was served by United States Mail, postage prepaid, as follows:

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