

FILED

AUG 06 2007

Terri A. Lorenzon, Director
Environmental Quality Council

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

**IN THE MATTER OF THE APPEAL OF POWDER)
RIVER BASIN RESOURCE COUNCIL OF THE)
RECLASSIFICATION AND DOWNGRADE OF THREE)
DRAINAGES TO CRAZY WOMAN CREEK (Kennedy)
South Area Addition) AND THEIR TRIBUTARIES)**

Docket No. 06-3804

**DEPARTMENT OF ENVIRONMENTAL QUALITY/WATER
QUALITY DIVISION'S OPPOSITION TO PETITIONER'S
MOTION FOR SUMMARY JUDGMENT**

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 Opposition to Wyoming Outdoor Council's and Powder River Basin Resource Council's (collectively Petitioners) Motion for Summary Judgment and states to the Environmental Quality Council (EQC) the following:

1. Chapter 1 of the DEQ/WQD Rules and Regulation allow the reclassification of ephemeral drainages in Wyoming.
2. The drainages in question in the above captioned matter are intermittent and ephemeral stream channels that lack the hydrologic potential to normally support and sustain aquatic life and contain only infrequent wetland occurrences or impoundments within or

adjacent to the stream channel over its entire length. DEQ/WQD Rule and Regulation, Chapter 1, Section 4(d)(ii).


3. The DEQ/WQD may lower a classification if it is shown through a use Attainability Analysis (UAA) that natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use. DEQ/WQD Rule and Regulation, Chapter 1, Section 33(b)(ii).

4. The reclassifications in this matter comply with the DEQ/WDS's Rules and Regulations, Chapter 1.

5. Paragraphs 1 through 4 show that there are issues of material fact that need to be heard by the EQC.

WHEREFORE the DEQ respectfully request that the EQD deny Petitioners' Motion for Summary Judgment.

DATED this 6th day of August, 2007.



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CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that on this 6th day of August, 2007 the foregoing PRE-HEARING DISCLOSURES was served by United States Mail, postage prepaid, as follows:

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