

DEC 19 2007

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

Terri A. Lorenzon, Director
Environmental Quality Council

**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'S PETITION FOR REHEARING

The Department of Environmental Quality(DEQ)/Water Quality Division (WQD) by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, and pursuant to Chapter IV, Section 1, of the Environmental Quality Council (EQC) rules of practice and procedure, hereby petitions the EQC to reconsider its decision granting the Powder River Basin Resource Council's (PRBRC) Motion for Summary Judgment of the reclassification and downgrade of three drainages to Crazy Woman Creek and their tributaries. In support of this Petition, the DEQ/WQD states the following:

1. The decision of the EQC presents new questions of fact upon which the DEQ/WQD had no opportunity to argue before the EQC.
2. Contrary to Conclusion of Law, Paragraph 9 of the EQC's Order Granting Petitioner's Motion For Summary Judgment, the DEQ/WQD did claim its own administrative rules and regulations, Chapter 1, Sections 3, 4 & 34 as the basis for its decision, in addition to Section 33, for lowering the classification of the three tributaries to Crazy Woman Creek from 3B waters to 4B waters.

3. The Administrator's final decision dated February 3, 2006, includes Chapter 1, Sections 3, 4 & 34 as part of the reasoning for lowering the classification from 3B waters to 4B waters in the three tributaries to Crazy Woman Creek. The final decision of the administrator is marked as Exhibit 1 and is attached hereto and made a part of this Petition by this reference.

4. The EQC's Order is based on an improper application and misunderstanding of Chapter 1 of the DEQ/WQD rules and regulations by the EQC. The Order erroneously concludes that the DEQ/WQD only relied on Chapter 1, Section 33 in lowering the classifications of the three tributaries to Crazy Woman Creek.

5. The question is not whether the DEQ/WQD erred by basing its decision solely on Chapter 1, Section 33, it is whether the DEQ/WQD properly applied Sections 3, 4, and 34 in addition to Section 33 when it made its decision downgrading the classification and removing aquatic life use in the three tributaries to Crazy Woman Creek. Specifically, the DEQ/WQD relied on Chapter 1, Section 4(d)(ii), together with Section 33 allowing the downgrade and removal of the aquatic life designation because intermittent flow conditions prevent the reasonable attainment of aquatic life in the drainage as a whole. To properly resolve this case, the EQC must consider and properly interpret Chapter 1, Section 4(d)(ii) together with Chapter 1, Section 33 to determine if the DEQ/WQD's basis for downgrading the tributaries to Crazy Woman Creek is consistent with applicable law.

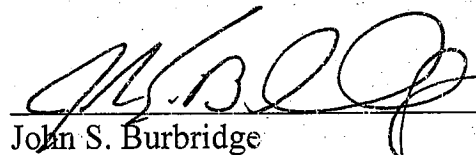
6. The decision by the EQC is contrary to its own intent when it adopted Chapter 1 of the DEQ/WQD rules and regulations in 2001.

7. The EQC, by not considering Chapter 1, Section 4 of the DEQ/WQD's rules and regulations, reached an erroneous conclusion when it granted PRBRC's Motion for Summary Judgment.

WHEREFORE Petitioner, Department of Environmental Quality respectfully requests that the Environmental Quality Council vacate its Order Granting Petitioner's Motion For Summary Judgment and set the above captioned matter for contested case hearing.

DATED this 19th day of December 2007

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY



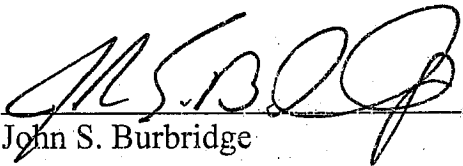
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CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that the foregoing Department of Environmental Quality's Petition for Rehearing was served by US. Mail, postage prepaid, and addressed correctly, to the following people on the 19th day of December, 2007:

Jill Morrison
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Steve Jones
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Wyoming Outdoor Council
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