

**FILED**

**AUG 10 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**

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

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The Department of Environmental Quality (DEQ)/ Water Quality Division (Division) 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 August 3, 2005. The UAA requested that certain drainages to Crazy woman Creek in Johnson County be reclassified as Class 4B drainages from Class 3B drainages. This reclassification removes the aquatic life use. The Division approved the petition on February 6, 2006. That decision was appealed by the Powder River Basin Resource Council (PRBRC) on April 5, 2006 and the Wyoming Outdoor Council (WOC) on April 7, 2006 (collectively Petitioners). PRBRC allege that the UAA petition incorrectly changes the drainages to Crazy

Woman Creek from class 3B to class 4B. Plaintiffs content that the UAA should take into account future Coal Bed Methane (CBM) produced water flows, that the UAA is inadequate because the study only accounts for ten (10%) percent of the entire drainage area, and that the UAA is not protective of the current and existing uses of the drainages. The Division's position is that the reclassifications made as a result of the UAA accurately classifies the drainages.

### **LEGAL ISSUE**

Did the Division reclassify the three drainages to Crazy woman Creek in compliance with Chapter 1, 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 25<sup>th</sup> Street, 4<sup>th</sup> Floor West  
Cheyenne, Wyoming 82002  
307-777-7781

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 October of 2005 regarding the reclassification of Crazy Woman Creek and its tributaries. Based on those observations, DiRienzo will testify

that Kennedy's petition in accurate and in full compliance with the law.

**MAY CALL:**

Daniel J. Berlin  
Anchor Environmental  
1423 3<sup>rd</sup> Avenue, Suite 300  
Seattle, Washington 98101  
206-287-9130

Mr. Berlin may be called to testify any and all aspects regarding the UAA petition prepared by RETEC and filed with the DEQ/WQD by Kennedy Oil.

Bill Wuerthele  
United States EPA  
999 18<sup>th</sup> Street, Suite 300  
Denver, Colorado 80202-2466  
303-312-6943

Mr. Wuerthele may be called to testify regarding the EPA's application of the Clean Water Act and whether the DEQ/WQD rules are compliant federal law. In addition, Mr. Wuerthele may be asked to testify regarding his knowledge of the reclassification of the three tributaries to Crazy Woman Creek at issue in this case.

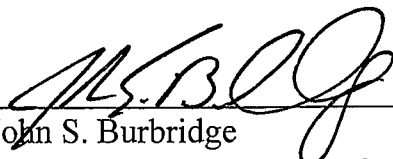
The Division may call any witness listed by the petitioners in the above-captioned matter. In addition, the Division may call any witness needed for rebuttal testimony.

**EXHIBITS**

- State's Exhibit 1: DEQ Decision Document
- State's Exhibit 2: UAA petition from Kennedy Oil
- State's Exhibit 3: Public Notice and Mailing List

- State's Exhibit 3: Public Notice and Mailing List
- State's Exhibit 4: Public Comments and DEQ Responses
- State's Exhibit 5: Wetland Statistics, DEQ field notes and Photos
- State's Exhibit 6: DEQ Submittal Letter to EPA
- State's Exhibit 7: Attorney General Certification
- State's Exhibit 8: EPA Approval Letter
- State's Exhibit 9: WQRR, Chapter 1, in effect at time of decision on UAA petition
- State's Exhibit 10: UAA Implementation Policy, in effect at time of decision on UAA petition
- State's Exhibit 11: EQC Statement of Reasons for 2001 WQRR, Chapter 1 Rule Making
- State's Exhibit 12: Summary of Comments and Responses for 2001 WQRR, Chapter 1 rule making
- State's Exhibit 13: EPA Approval of 2001 WQRR, Chapter 1 rule making

DATED this 10<sup>th</sup> day of August, 2007.



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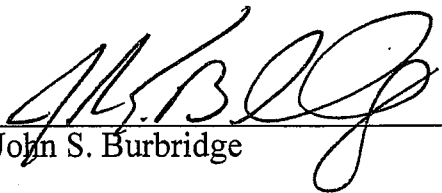
John S. Burbridge  
Senior Assistant Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82001  
307-777-7823

## CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that on this 10<sup>th</sup> day of August, 2007 the foregoing PRE-HEARING DISCLOSURES was served by United States Mail, postage prepaid, as follows:

Jill Morrison  
Powder River Basin Resource Council  
934 North Main  
Sheridan, Wyoming 82801

Steve Jones  
Watershed Protection Program Attorney  
Wyoming Outdoor Council  
262 Lincoln Street  
Lander, Wyoming 82520

  
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John S. Burbridge