

**FILED**

APR 05 2006

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
OF THE 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. *Dk-3804*

**PETITION**

The Powder River Basin Resource Council petitions the Environmental Quality Council of the State of Wyoming as follows:

1. Name and Address of Protestant: The Protestant is the Powder River Basin Resource Council located at 934 North Main, Sheridan, Wyoming 82801.
2. The action upon which a hearing is requested is an appeal of the issuance of a reclassification which downgrades three drainages to Crazy Woman Creek (Kennedy South Area Addition) and their tributaries by the Supervisor of the Watershed Program for the Department of Environmental Quality Water Quality Division.

Statement of Facts:

- a. The Powder River Basin Resource Council represents landowners and citizens working for the stewardship and responsible development of resources and protection of our land, water and air. We have members who will be potentially impacted by this action.
- b. On February 6, 2006, the Department of Environmental Quality (DEQ) watershed program supervisor, Bill DiRienzo, notified Powder River Basin Resource Council in writing of the DEQ final action and approval of the reclassification of three drainages to Crazy Woman Creek, Unnamed draw, Short Unnamed Draw and Morris Draw, (Kennedy South Area Addition) and their tributaries.
- c. This reclassification proposed by Kennedy Oil permits the downgrade of these tributaries to Crazy Woman Creek from a 3B to 4B.
- d. In addition to the Powder River Basin Resource Council, the downgrade and reclassification was commented on and opposed or recommended against as proposed, by the Lake DeSmet Conservation District, the US Fish and Wildlife Service, Wyoming Game and Fish and the US Environmental Protection Agency.

- e. In violation of the Clean Water Act and the DEQ Water Quality rules and regulations the Use Attainability Analysis was not conducted by DEQ. The UAA was conducted by a consultant for Kennedy Oil in order to facilitate the disposal of CBM discharge water from 128 CBM wells.
  - f. Chapter 1, section 33 (b) (ii) of the Wyoming Water Quality Rules and Regulations, allows removal of an aquatic life designation for a stream only where the aquatic life use is not attainable in the drainages natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met (section 33(b)(ii)).
  - g. The UAA is simply meant to accommodate the discharge from 128 CBM wells from the Kennedy Oil & Gas CBM field. According to EPA this is not an appropriate application of the UAA process. The discharge of the CBM water can be done in such a way as to meet Class 3 (aquatic life) protections. The produced water will make all of these streams and draws wet enough so they will support aquatic life (even assuming that they do not now support aquatic life). Therefore, this proposed reclassification does not meet the regulatory criteria necessary for a lowering of the classification to Class 4B or 4C.
  - h. The UAA conducted by Kennedy Oil is incomplete and statistically inadequate. As little as 10% of the entire drainages was sampled or inspected. Additionally, the findings do not support a downgrade of the stream classification since wetland areas were discovered in two of the three drainages.
  - i. The UAA is also incomplete because it fails to include information about existing or proposed discharges to the draw, which according to the comments from the US Fish and Wildlife Service is necessary "to make an informed decision for reclassification."
  - j. The downgrade classification of these tributaries violates the Clean Water Act and the Wyoming Water Quality rules and regulations because it does not protect the current and existing uses on the tributaries or downstream on Crazy Woman Creek.
3. Request for Hearing. The Powder River Basin Resource Council requests a hearing before the Environmental Quality Council and requests that the Council reverse the decision of the DEQ to allow the downgrade and reclassification of the tributaries of Crazy Woman Creek.

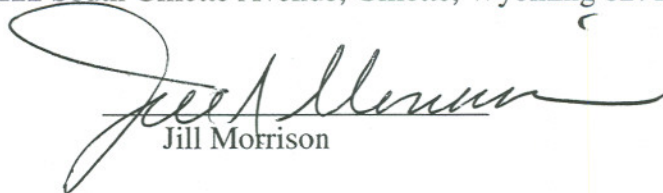
Hand Delivered this 5<sup>th</sup> day of April, 2005

By   
Jill Morrison

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

### Certificate of Service

I certify that on the 5<sup>th</sup> day of April, 2006, I hand delivered a true and correct copy of the foregoing to the Environmental Quality Council and the Director of the Department of Environmental Quality. I also certify that on the 5<sup>th</sup> day of April, 2006 I served a true and correct copy of the foregoing by depositing the same in the U.S. Mail, postage prepaid and addressed to Kennedy Oil and Gas, 222 South Gillette Avenue, Gillette, Wyoming 82716.



Jill Morrison