

FILED

JAN 03 2008

BEFORE THE
WYOMING ENVIRONMENTAL QUALITY COUNCIL

Terri A. Lorenzon, Director
Wyoming Environmental Quality Council

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

Docket No. 06-3804

PETROLEUM ASSOCIATION OF WYOMING'S
MOTION TO INTERVENE

The Petroleum Association of Wyoming ("PAW") moves to intervene in the above captioned matter pending before the Wyoming Environmental Quality Council ("EQC"). PAW is Wyoming's largest and oldest petroleum industry trade association. Its members utilize the Use Attainability Analysis ("UAA") rules adopted by the EQC and implemented by the Wyoming Department of Environmental Quality, Water Quality Division (collectively "DEQ"). Those rules are an important component of Wyoming's systematic approach for designating uses and classifying waters. See p. 17, Statement of Principal Reasons, Before the EQC, *In the Matter of Chapter 1, Quality Standards for Wyoming Surface Waters, Water Quality Rules and Regulations*.

This appeal by Petitioners Wyoming Outdoor Council and Powder River Basin Resource Council (collectively "PRBRC") concerns the decision by the DEQ on February 6, 2006, to reclassify three tributaries to Crazy Woman Creek in Johnson County, Wyoming, referred to as Morris Draw, Unnamed Draw, and Short Unnamed Draw. The DEQ concluded that it was appropriate to reclassify these three tributaries

to Class 4B, from Class 3B. PRBRC appealed the DEQ's decision to the EQC and the EQC granted PRBRC's Motion for Summary Judgment on November 30, 2007. The DEQ requested a rehearing before the EQC on December 19, 2007.

The EQC's Rules of Practice and Procedure Applicable to Hearings in Contested Cases (Chapter II) regarding intervention provide:

Section 7. Intervention.

(a) Any person interested in obtaining the relief sought by a party or otherwise interested in the determination of a proceeding relating to other than surface coal mining operations pending before the Council may petition for leave to intervene in such proceeding prior to or at the date of hearing, but not thereafter except for good cause shown. The petition shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief is sought, the same should conform to the requirements for a formal petition. Leave will not be granted unless Council shall determine that the party requesting to intervene is adversely affected by the action, has a legal right under the Environmental Quality Act or the Wyoming Administrative Procedure Act.

The PAW is interested in obtaining a rehearing on the subject matter, as requested by the DEQ. PAW members would be adversely affected should the EQC deny the requested rehearing.

In accordance with the Wyoming Water Quality Rules and Regulations ("WWQR&R") and DEQ policy, Kennedy Oil Company submitted a petition to DEQ requesting that certain draws that drain into Crazy Woman Creek be reclassified as Class 4B drainages from Class 3B drainages. Pursuant to the reclassification, Kennedy Oil would be able to surface-discharge the produced water from coal bed natural gas wells in Johnson County, Wyoming, to the drainages at issue. Upon classification,

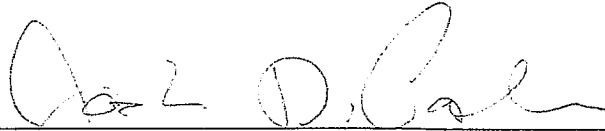
Kennedy Oil would still be required to comply with water quality standards applicable to Class 4B drainages in accordance with the WWQR&R and DEQ policy.

PAW members include many companies who, like Kennedy Oil, develop coal bed natural gas wells, natural gas wells, and oil wells across Wyoming. In fact, PAW members account for approximately ninety percent of the natural gas and two-thirds of the crude oil produced in Wyoming. PAW members are engaged in operations to treat and discharge produced water, including surface-discharge to drainages across Wyoming. The PAW has worked closely with the DEQ to promote and implement the UAA rules and policy and the PAW has compelling interests in relying on the DEQ's interpretation and implementation of these rules.

The decision being challenged by this rehearing directly affects the petroleum industry. Since the decision being challenged prevents the DEQ from downgrading a drainage classification from Class 3B to Class 4B when there is the presence or indication of any areas in the drainage capable of supporting aquatic life, no matter how small that area is compared to the whole drainage, PAW members arguably would not be able to obtain reclassification of any drainage capable of supporting aquatic life. That rationale, which is the underpinning of the decision being challenged by this rehearing, represents a fundamental change in the UAA rules and policy that could effectively render the Class 4B designation useless. The decision is contrary to the UAA rules and policy and contrary to the UAA process that the PAW promoted when the UAA rules and policy were promulgated. The PAW desires and needs to protect its interests and the interests of its members adversely affected by the decision now challenged at rehearing.

The PAW therefore requests leave to intervene in this appeal for the limited purpose of supporting the DEQ's position on rehearing. If the EQC grants the request for rehearing, PAW wishes to be heard or any oral argument on the motion.

Respectfully submitted this 3rd day of January, 2008.



Jack D. Palma, II, P.C.
HOLLAND & HART LLP
P.O. Box 1347
Cheyenne, Wyoming 82003-1347
Telephone: (307) 778-4218
Fax: (307) 778-8175

Andrew A. Irvine
HOLLAND & HART LLP
25 South Willow Street, Suite 200
P.O. Box 68
Jackson, WY 83001-0068
Direct: 307-739-9741
Fax: 307-739-9744

ATTORNEYS FOR
PETROLEUM ASSOCIATION OF WYOMING

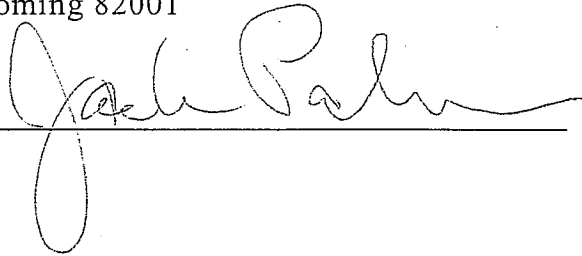
CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2008, the foregoing **PETROLEUM ASSOCIATION OF WYOMING'S MOTION TO INTERVENE** 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, WY 82520

John S. Burbridge
Senior Assistant Attorney General
123 Capitol Building
Cheyenne, Wyoming 82001



A handwritten signature in cursive script, appearing to read "John S. Burbridge", is written over a horizontal line. The signature is fluid and extends slightly below the line.