

BEFORE THE
WYOMING ENVIRONMENTAL QUALITY COUNCIL

IN THE MATER OF THE APPEAL OF)
WYOMING OUTDOOR COUNCIL AND)
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

ORDER DENYING MOTION TO INTERVENE

The Petroleum Association of Wyoming filed a Motion to Intervene in the above-entitled matter on January 3, 2008. Petitioners, Wyoming Outdoor Council and Powder River Basin Resource Council, filed their Response to Motion for Intervene on Jan. 28, 2008. The Respondent, the Wyoming Department of Environmental Quality (DEQ) did not file a response to the Motion to Intervene. This matter came before the Environmental Quality Council (EQC) for oral argument on March 19, 2008, in Cheyenne, Wyoming. Having heard the argument of counsel for the Petitioners and the Petroleum Association of Wyoming, and being otherwise fully advised in the premises, the Environmental Quality Council finds and concludes that:

FINDINGS OF FACT

1. The reclassification and downgrade of the three tributaries to Crazy Woman Creek, referred to as Unnamed Draw, Short Unnamed Draw and Morris Draw and all of their mapped and unmapped tributaries, was initially challenged by Petitioner Powder River Basin Resource Council on April 5, 2006, and by Petitioner Wyoming Outdoor Council on April 6, 2006.
2. A Scheduling Order in this matter was subsequently issued by the Environmental Quality Council (EQC) on March 16, 2007.
3. On July 20, 2007, the Petitioners filed their Motion for Summary Judgment. The Wyoming Department of Environmental Quality (DEQ) responded to that Motion on August 6, 2007. Oral argument on that motion occurred on Sept. 5, 2007.

3. The hearing date was set for September 26, 2007, at which time the EQC ruled in favor of the Petitioners and granted Summary Judgment.
4. The Order Granting Petitioners' Motion for Summary Judgment was filed in this matter on November 30, 2007.
5. The DEQ filed a Petition for Reconsideration on Dec. 19, 2007.
6. On January 3, 2008, the Petroleum Association of Wyoming (PAW) filed its Motion to Intervene, expressing a desire to intervene in this matter "for the limited purpose of supporting the DEQ's position on rehearing."
7. The Petitioners filed their Response to Motion to Intervene on January 28, 2008, objecting to the intervention of the Petroleum Association of Wyoming.
8. The Petroleum Association of Wyoming presented no evidence to the EQC concerning when it first became aware that this case was pending before the EQC.
9. PAW argued that its interest in this appeal first arose as a result of the judgment entered by the EQC on Nov. 30, 2007.
10. PAW did not meet its burden of showing good cause for moving to intervene after the final hearing in this matter, which took place on Sept. 26, 2007.

CONCLUSIONS OF LAW

11. Chapter 2, Section 7 of the Rules of Practice and Procedure of the Department of Environmental Quality provides as follows:

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.

12. The Petroleum Association of Wyoming, having filed its Motion to Intervene after the date of the scheduled final hearing in this matter, was required to show good cause

why it should be allowed to intervene after the hearing date. As noted above, intervention by a party is not allowed after the hearing has taken place in a case, "except for good cause shown." The final hearing in this case took place on Sept. 26, 2008.

13 The Petroleum Association of Wyoming did not show good cause sufficient to justify the granting of a Motion to Intervene at such a late date in this matter.

ORDER

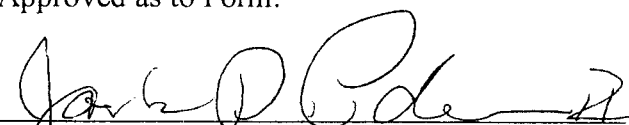
Based upon the foregoing Findings of Fact and Conclusion of Law, the Environmental Quality Council hereby Orders that:

A. The Motion to Intervene of the Petroleum Association of Wyoming is hereby denied.


Dated this _____ day of _____ 2008.

Dennis Boal
Chairman, Environmental Quality Council

Approved as to Form:



Jack D. Palma, II
Holland & Hart, LLP



John S. Burbridge
Senior Assistant Attorney General