

FILED

MAY 31 2006

**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

RESPONSE OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

The Department of Environmental Quality(DEQ)/Water Quality Division (WQD) by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, hereby responds to Powder River Basin Resource Council's (PRBRC) appeal of the reclassification and downgrade of three drainages to Crazy Woman Creek and their tributaries and states to the Environmental Quality Council (EQC) the following:

1. The PRBRC has failed to show that it has standing to appeal the reclassification and downgrading of the drainages to Crazy Woman Creek and their tributaries as no member of PRBRC that is directly affected by the DEQ's action has been listed in its Petition. As such, the EQC should dismiss PRBRC's Petition for lack of standing.
2. The DEQ admits paragraph b of PRBRC's Petition.
3. The DEQ admits paragraph c of PRBRC's Petition.
4. The DEQ asserts that PRBRC's assertions contained in paragraph d are misleading.

The Wyoming Game and Fish Department did not oppose the reclassification, but merely advised that the discharged water should not reach Crazy Woman Creek, to which the DEQ agreed. Comments made by the U.S. Fish and Wildlife Service (USFWS) do not object to or oppose the reclassification and downgrading of the drainages to Crazy Woman Creek and their tributaries, but merely address some issues that the USFWS would like to see in the Use Attainability Analysis (UAA). The U.S. Environmental Protection Agency (EPA) never specifically opposed the reclassification and downgrade in its comments to the DEQ. In fact, the EPA's comments suggest that the drainages and tributaries in question can be reclassified under the UAA, but that the DEQ should wait for a proposed new classification that is not yet part of the DEQ's rules and regulations. The DEQ correctly concluded that it could not wait on proposed rules but had to act pursuant to its existing rules and regulations.

5. The DEQ denies PRBRC's allegation contained in paragraph e of its Petition.

6. The DEQ asserts that the PRBRC does not accurately and fully present Water Quality Rule and Regulation, Chapter 1, Section 33(b)(ii) in its Petition. The PRBRC only partially quotes Chapter 1, Section 33(b)(ii).

7. The UAA is used by the DEQ to determine whether the default aquatic life designation is appropriate and does not attempt to evaluate the effects of future discharges in its reclassification process.

8. The DEQ denies PRBRC's allegations contained in paragraph h of its Petition.


9. The DEQ denies PRBRC's allegations contained in paragraph i of its Petition.

10. The DEQ denies PRBRC's allegations contained in paragraph j of its Petition.

11. The DEQ denies each and every allegation not specifically admitted to in this response.

DATED this 31st day of May, 2006.

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY



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CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that the foregoing Response was served by US. Mail, postage prepaid, and addressed correctly, to the following people on the 31st day of May, 2006:

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