

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING**

**IN THE MATTER OF THE APPEAL)
OF POWDER RIVER BASIN)
RESOURCE COUNCIL OF THE)
USE ATTAINABILITY ANALYSIS)
AND RECLASSIFICATION)
OF THREE DRAINAGES TO)
CRAZY WOMAN CREEK)
AND THEIR TRIBUTARIES)**

FILED

APR 07 2006

Terri A. Lorenzon, Director
Environmental Quality Council

EQC Docket No. 06-3804

PETITION of WYOMING OUTDOOR COUNCIL

The Wyoming Outdoor Council, by and through its attorney, Steve Jones, and hereby Petitions the Environmental Quality Council of the State of Wyoming as follows:

1. The Petitioner in this matter is the Wyoming Outdoor Council (WOC), located at 262 Lincoln St., Lander, WY 82520.
2. The appeal of the reclassification determination in this matter is made pursuant to Chapter 1, Section 16, of the Rules of Practice and Procedure of the Department of Environmental Quality.
3. The action upon which a hearing is requested is the use attainability analysis and subsequent reclassification of three drainages to Crazy Woman Creek and their tributaries by the Department of Environmental Quality, Water Quality Division (DEQ/WQD).

Statement of Facts

For its Statement of Facts, Wyoming Outdoor Council presents the following:

4. Since 1967 the Wyoming Outdoor Council has worked to protect Wyoming's environment and quality of life for future generations. Wyoming Outdoor Council strives for a Wyoming thriving with abundant wildlife, healthy landscapes, and clean water.
5. On February 6, 2006 the DEQ/WQD Administrator, John Wagner, made a final determination of the reclassification of three drainages to Crazy Woman Creek (Kennedy South Area Addition) and their tributaries. The determination was made It was made after consideration of the "Use Attainability Analysis Kennedy Oil South Area Addition Johnson County, August 3, 2005," and related public comments on the proposal.
6. This reclassification decision downgrades each of these tributaries to Crazy Woman Creek, referred to as Unnamed Draw, Short Unnamed Draw and Morris Draw, and all of their mapped and unmapped tributaries, from Class 3B to Class 4B.

7. The Use Attainability Analysis (UAA) conducted in this matter is not a structured scientific assessment, as required by the DEQ Water Quality Rules and Regulations. It was not conducted by DEQ. The UAA was conducted by a consultant for Kennedy Oil Company, who paid for the study, and who is also the proponent of the proposed downgrade of these streams.

8. In this case, the Use Attainability Analysis is required to be a detailed assessment and evaluation of watershed conditions and economic analysis in order to justify what is, in fact, the underlying request here: to allow Kennedy Oil to discharge pollution into these drainages without having to meet aquatic life standards.

9. Kennedy Oil Company desires to lower the classification for these waters to Class 4B so that it can then begin discharging into these streams, creeks and draws, from 128 coal bed methane wells, without having to meet standards that are protective of aquatic life (Class 3 waters). According to the U. S. Environmental Protection Agency (EPA), this is not an appropriate application of the UAA process.

10. When Kennedy Oil begins discharging produced water from its 128 wells into these drainages, there is no dispute they will all be capable of supporting aquatic life.

11. 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 because "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)). This exception is exactly the case with respect to all of these proposed classification changes.

12. The discharge from Kennedy Oil Company's coal bed methane wells 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 -- a point which Wyoming Outdoor Council disputes in any event). Therefore, this proposed reclassification does not meet the regulatory criteria *necessary* for a lowering of the classification to Class 4B.

13. The UAA conducted by RETEC Group for Kennedy Oil is incomplete and statistically inadequate. As little as 10% of all of the entire drainages were sampled or inspected. Most importantly, however, is the fact that the findings of the use attainability analysis do not support a downgrade of the stream classification since wetland areas were discovered in two of the three drainages.

14. 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."

15. The survey conducted by RETEC Group, and paid for by Kennedy Oil, was taken during the

late stages of a multi-year drought in the Powder River Basin. One inspection (in July) during a drought year is not adequate. These streams and draws must be assumed to support aquatic life until much better proof comes along. Such proof should involve a multi-year study, and much more than just mere observation. Sampling and testing for aquatic life, which can exist below the surface during drought years, must be conducted.

16. The downgrade reclassification of these tributaries violates the Clean Water Act, the Wyoming Environmental Quality Act and the Wyoming Water Quality Rules and Regulations because it does not protect the current and existing uses on these tributaries and will not protect the current and existing uses of Crazy Woman Creek.

WHEREFORE, the Wyoming Outdoor Council asks that the Environmental Quality Council:

- A. Deny the reclassification of the above-mentioned tributaries of Crazy Woman Creek
- B. Restore the classification of the above-mentioned tributaries to Class 3 or above.
- C. Grant such other and further relief as the Environmental Quality Council may deem just and equitable.

Dated this 6th day of April, 2006.



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NOTICE OF SERVICE OF PETITION

The foregoing Petition of the Wyoming Outdoor Council of the Use Attainability Analysis and Reclassification of Three Drainages of Crazy Woman Creek and Their Tributaries was served on this 6th day of April, by mailing a true and correct copy of the same to the following, via U. S. mail, to:

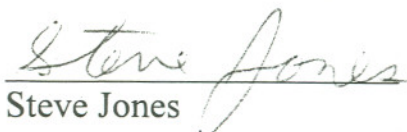
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Dated this 6th day of April, 2006.


Steve Jones