

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
THE PUMPKIN CREEK AND THE)
WILLOW CREEK WYPDES WATERSHED) Dockets No. 06-3815, 06-3816
GENERAL PERMITS AND THE) 06-3817 (Consolidated)
FOURMILE CREEK WATERSHED PLAN)

DEQ'S CORRECTIONS TO PRE-HEARING CONFERENCE

Respondent Wyoming Department of Environmental Quality (DEQ), pursuant to the Wyoming Environmental Quality Council's (EQC) January 15, 2008 Pre-Hearing Conference Order in this consolidated case, submits three corrections to that Order, which among other things:

1. Notes that Respondent DEQ withdrew its Motion for Partial Summary Judgment;
2. Lists issues identified as issues involved in this proceeding; and
3. Lists the exhibits to which the parties' stipulated for admission.

The DEQ's three corrections are as follows:

1. In withdrawing its motion for partial summary judgment on two specific issues, as the EQC requested, the DEQ expressly did so "in reliance on the understanding that those two issues are reserved for consideration and determination in the full hearing." The document the DEQ filed with the EQC to withdraw its motion was even entitled "DEQ's Withdrawal of Motion for Partial Summary Judgment & Request to Retain Memorandum on *Issues Reserved for Hearing*" (emphasis added). The EQC's Pre-Hearing Conference Order does not acknowledge this, and the identified issue regarding ripeness of the Fourmile Plan for review on the merits is not listed as an issue for the hearing.

2. As noted in #1 above, the identified issue regarding ripeness of the Fourmile Plan for review on the merits is not listed as an issue for the hearing. That issue was specifically listed in both Petitioner Wyoming Outdoor Council's (WOC) Pre-Hearing Memorandum (Issue #5) and in the DEQ's Pre-Hearing Memorandum (Issues, item #3), and it is counsel for DEQ's recollection that this issue was agreed to at the pe-hearing conference. This is essentially an issue of law. For the reasons explained in the Memorandum *combined* with the DEQ's Motion for Partial Summary Judgment (which the DEQ's Withdrawal of Motion for Partial Summary Judgment expressly requested to be retained), a decision on the Fourmile Plan issue is needed at this time.

3. The EQC's Pre-Hearing Conference Order lists both (a) Y/M/C's Exhibit 17 and (c) the DEQ's Exhibit 7, which are the same exhibit (the 08-25-06 Rationale for the Fourmile Plan). As such, it is counsel for DEQ's recollection that, to avoid duplication, it was decided to admit that exhibit as Y/M/C's Exhibit 17, and not as DEQ Exhibit 7. Therefore, DEQ did not list or include DEQ Exhibit 7 in the binders provided to the EQC.

The DEQ respectfully requests that the EQC's Pre-Hearing Conference Order in this matter be corrected accordingly.

DATED this 17 day of January, 2008.



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CERTIFICATE OF SERVICE

This certifies that true and correct copies of the foregoing DEQ'S CORRECTIONS TO PRE-HEARING CONFERENCE ORDER were served this 17 day of January, 2008 by United States Mail, first class postage prepaid, and by e-mail, addressed as follows:

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