

**BEFORE THE
WYOMING ENVIRONMENTAL QUALITY COUNCIL**

FILED

JUL 24 2007

Terri A. Lorenzon, Director
Environmental Quality Council

Wyoming Outdoor Council,)	
)	
Petitioner,)	
)	
vs.)	
)	
Wyoming Department of Environmental)	
Quality, Water Quality Division,)	
)	
Respondent.)	Docket No. 06-3816
)	Docket No. 06-3817

**RESPONSE OF WYOMING OUTDOOR COUNCIL
TO PETITION FOR LEAVE TO INTERVENE**

Comes now the Wyoming Outdoor Council and for its Response of Wyoming Outdoor Council to Petition for Leave to Intervene hereby presents the following:

1. While the Wyoming Outdoor Council filed its Petition challenging the issuance of the Willow Creek and Pumpkin Creek Watershed General Permits on Nov. 9, 2006, the request to intervene in this matter was not brought by the proposed Intervenor Yates Petroleum Corp., Marathon Oil Company and Citation Oil and Gas Corp. until July 3, 2007. Their petition in fact was not received by Wyoming Outdoor Council until July 9, 2007, just a few days before its Motion for Summary Judgment was due to be filed in this matter.

2. Rule 24(a), Wyoming Rules of Civil Procedure, which applies to this matter by virtue of the Rules of Practice and Procedure of the Wyoming Department of Environmental Quality, provides:

(a) Intervention of right. - Upon timely application anyone shall be permitted to intervene in an action:

- (1) When a statute confers an unconditional right to intervene; or
- (2) When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

3. There are two problems with the claim of the proposed Intervenor, as set forth in their "petition." First, the application to intervene must be timely filed. In this case it was not filed in a timely fashion, and therefore their petition should be denied.

4. This matter was well under way, in terms of planning for a summary judgment hearing, and, if necessary, a contested case hearing, well before the proposed Intervenor filed their motion. A scheduling conference was held in this matter on May 21, 2007. The proposed Intervenor was aware of this and yet made no effort to file their motion prior to that scheduling conference.

5. More importantly, Rule 24(a) provides that where "the applicant's interest is adequately represented by existing parties" there is no right to intervene. Such is the case in this matter. The Wyoming Department of Environmental Quality seeks to uphold the watershed general permits that it issued. The proposed Intervenor wants the watershed general permits upheld as well. Their interests are identical in this regard.

6. There is no need to involve third parties at this stage of the litigation when the proposed Intervenor's interests will be adequately represented by the Wyoming Department of Environmental Quality and their able attorneys.

7. Furthermore, if "the applicant's interest is identical to that of one of the present parties, a compelling showing should be required to demonstrate inadequate representation." Prete v. Bradbury, 438 F.3d 949, 954 (9th Cir. 2006). The proposed Intervenor has not made any such compelling showing. The WDEQ can represent the interests of the proposed Intervenor and have already indicated they intend to vigorously defend these general permits.

8. Furthermore, intervention as of right is properly denied where the interest of the intervenor is merely contingent. State Farm Mutual Auto. Insurance v. Colley, 871 P.2d 191, 194 (Wyo. 1994). Yet the proposed Intervenor has failed to identify the precise nature of their interest. It is worthy of note, in this regard, that they are free to apply for individual discharge permits, and obtain the same authority to discharge pollution that they seek under the general watershed permits at issue herein, even if these general permits were to be overturned by the Environmental Quality Council. The extent to which their rights are impaired is, therefore, unclear.

9. The right to intervene is a question of law and fact. Platte County School Dist. No. 1 v. Basin Electric Power Coop., 638 P.2d 1276, 1278 (Wyo. 1982). Yet the proposed Intervenor has failed to document any facts to support their claim of an "interest relating to the subject of this action." (See Para. 6 of the proposed Intervenor's petition.)

10. The burden rests with the proposed Intervenor to demonstrate that they have a right to intervene, and they have failed to so demonstrate. There are no affidavits of any of the Intervenor attached to their petition, and there are no attached exhibits or other documents to demonstrate their interest in this matter, nor is there any documentation presented to reliably inform the Environmental Quality Council about the nature and extent of the interests of the proposed Intervenor in the instant case. They

have therefore failed to meet their burden of showing a right to intervene, and their petition should therefore be denied.

11. The proposed Intervenor is "obligated to demonstrate that they have a significant interest in the present litigation." Platte County School Dist. No. 1 v. Basin Electric Power Coop., 638 P. 2d 1276, 1279 (Wyo. 1982). Yet they have not done so.

12. As was discussed at the Scheduling Conference with the hearing examiner on May 21, 2007, it may make sense, at some point, to consolidate the above case with the appeal filed by the proposed Intervenor, Docket No. 06-3815. (Curiously, the proposed Intervenor does not even mention, in their "petition," the fact that they have filed an appeal of the Willow Creek and Pumpkin Creek Watershed General Permits, as well as the Four Mile Creek Watershed Plan, on the same day as the appeal in the instant case was filed.)

13. It would make sense to consolidate the two cases if the Environmental Quality Council rules against the Petitioner (WOC) in the instant case with regard to its Motion for Summary Judgment. That Motion, if granted by the Environmental Quality Council, would obviate the need for further contested case hearings in either case. But if the Motion is not granted, then it would make sense at that time to proceed with discovery on the merits of the two cases, and have one contested case hearing on the facts surrounding the issuance of the general watershed permits in question, and the terms of those permits.

WHEREFORE, the Petitioner, Wyoming Outdoor Council moves that the Environmental Quality Council:

- A. Deny the Petition for Leave to Intervene of the proposed Intervenor, or
- B. In the alternative, deny the Petition for Leave to Intervene of the proposed Intervenor at this time, but reconsider such petition after it has ruled on Wyoming Outdoor Council's Motion for Summary Judgment, or
- C. In the alternative, deny the Petition for Leave to Intervene of the proposed Intervenor at this time, but consolidate the three EQC Dockets: 06-3815, 06-3816 and 06-3817, into one case at such time as it may deem appropriate, after it has ruled upon the Petitioner's Motion for Summary Judgment.

D. Grant such other and further relief as it may deem just and equitable.

Dated: July 24, 2007.

Respectfully submitted,

A handwritten signature in cursive script that reads "Steve Jones". The signature is written in black ink and is positioned above a horizontal line.

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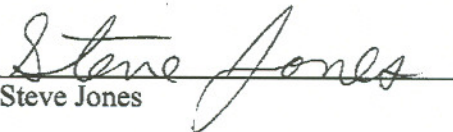
CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Petitioner's Response of Wyoming Outdoor Council to Petition for Leave to Intervene, by placing a copy of the same in the U.S. mail, postage prepaid, on the 24th day of July, 2007, and also by emailing a .pdf version of the same, addressed to the following:

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