

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

FILED

NOV 13 2009

*Jim Ruby, Executive Secretary
Environmental Quality Council*

IN THE MATTER OF THE APPEAL OF)
JOHN D. KOLTISKA, AC RANCH, INC.,)
A Wyoming Corporation, PRAIRIE DOG)
RANCH, INC. a Wyoming Statutory Close)
Corporation, and PRAIRIE DOG WATER)
SUPPLY COMPANY FROM WVPDES)
PERMIT NO. WY0054364)

DOCKET NO. 09-3805

AMENDED PRE-HEARING CONFERENCE ORDER

THIS MATTER came before the Environmental Quality Council (Council) on November 13, 2009, on the objections to the Pre-Hearing Conference Order by Pennaco and the Department. Upon review of the objections filed and the notes of the Conference and Pennaco's filing of witnesses the Council finds that the Pre-Hearing Conference Order should be amended to strike the identification of the Issues to any given party, striking John Koltiska as a will call witness for Pennaco and inserting Rob Koltiska as a may call witness. Based upon review of the pre-hearing conference record the objection as to the inclusion of pumpkins in the issues to be heard by the Council is overruled. The record of the pre hearing conference does not reflect any objection by the parties when the Protestant indicated the issues include protectiveness of pumpkins. There issues were read back to the parties with the language including pumpkins and neither the Department nor Pennaco expressed an objection at that time.

1. MOTIONS

- (a) Prairie Dog informed the parties that it intends to file a motion or motions in limine to address, among other issues, the burden of proof and an issue identified by Pennaco before the Council. Protestants will file all motions on or before close of business, November 9, 2009. Responses will be due no later than close of business, November 12, 2009. The motions will be addressed at 1:00 p.m. on November 16, 2009, prior to the beginning of the hearing. The parties were

advised that no oral argument will be heard on the motions but Council may ask questions of the parties.

2. ISSUES. The following issues were identified as the issues involved in this proceeding:

(a) Was the methodology used to set the conditions for the permit scientifically appropriate to protect irrigation of alfalfa and pumpkins?

(b) Are the permit conditions protective of irrigation of alfalfa and pumpkins?

3. WITNESSES. The parties identified the following witnesses who will be in attendance at the hearing and available to testify:

(a) DEQ will call as witnesses, Jason Thomas, Kathy Shreve, and Bill DiRienzo. DEQ has no may call witnesses.

(b) Prairie Dog will call as witnesses, John D. Koltiska, Dr. George Vance and Jim O'Neil, P.E. Prairie Dog also listed DEQ witnesses Jason Thomas and Kathy Shreve as will call witnesses and will conduct its direct examination of those two witnesses at the time of cross-examination.

(c) Pennaco will call as witnesses William Schafer, Ph.D., Warren W. Adams. Pennaco also listed Rob Koltiska as a may call witness and will conduct its direct examination of Mr. Koltiska during its cross examination.

4. EXHIBITS. In their pre-hearing memoranda, the parties identified the exhibits they intend to use during the hearing. The parties agreed that many of the exhibits are duplicative and stipulated to submitting a stipulated core set of exhibits on or before November 12, 2009. The parties may offer any of their remaining listed exhibits at the hearing with objecting parties setting forth their specific objections to those exhibits at that time.

5. ORDER OF PROCEEDINGS. Each party will have ten (10) minutes for opening statements. Following opening statements, the order for the presentation of evidence shall be as follows:

1. DEQ (background information regarding the permit)
2. Prairie Dog
3. Pennaco
4. Rebuttal

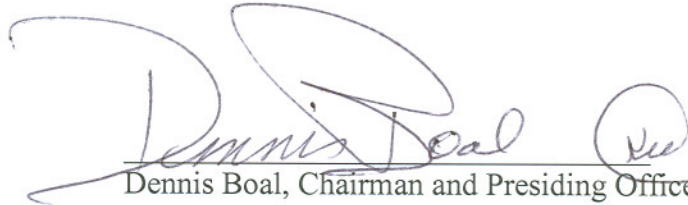
The Council will likely announce a limited time for closing statements.

6. DATE, TIME AND LOCATION OF HEARING. The hearing is scheduled for two and one-half days beginning November 16, 2009 at 1:00 p.m. and continuing through

Wednesday, November 18, 2009. The hearing location remains set in Room B-63 of the Herschler Building.

7. OBJECTIONS TO PRE-HEARING CONFERENCE ORDER. The parties shall have until noon, November 12, 2009 to serve and deliver any objections to this Order.

SO ORDERED this 13th day of November, 2009.

A handwritten signature in blue ink, appearing to read "Dennis Boal", is written over a horizontal line. To the right of the signature is a circular stamp containing the initials "DWB".

Dennis Boal, Chairman and Presiding Officer
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CERTIFICATE OF SERVICE

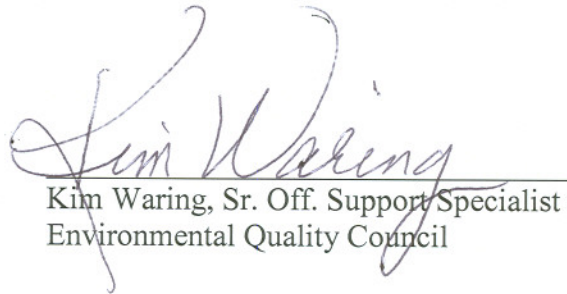
I, Kim Waring, certify that at Cheyenne, Wyoming, on the 13th day of November, 2009, I served a copy of the foregoing by electronic mail to the following:

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