

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

FILED

MAR 05 2007

Terri A. Lorenzon, Director
Environmental Quality Council

**IN THE MATTER OF THE APPEAL OF)
4W RANCH OBJECTION TO) DOCKET NO. 04-3801
NPDES PERMITS WY0051217,)
WY0051233 & WY0051373)**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER
FOR PERMIT NO. WY0051233 (BIG PORCUPINE)**

THIS MATTER came before the Environmental Quality Council (EQC) on September 26-27, 2006, in Douglas, Wyoming. The EQC members present at the hearing were Jon Brady presiding as Hearing Examiner, John Morris, Dennis Boal, Richard C. Moore P.E., and Sara Flitner. Terri A. Lorenzon, attorney for the EQC and Bridget Hill, Assistant Attorney General, were present to advise the EQC. At the hearing Bill Barrett Corporation (Barrett) was represented by Hadassah M. Reimer, the Department of Environmental Quality (DEQ) was represented by Michael Barrash, and the Appellants, 4W Ranch, Major Harshbarger and Mrs. Jean Harshbarger represented themselves. The EQC having considered the evidence presented and being otherwise well advised in the premises the Council finds as follows:

FINDINGS OF FACT

1. Initially this matter was the appeal of three WYPDES permits. Permit No. WY0051217 (Palm Tree Unit) and WY0051233 (the Big Porcupine Project), are issued to Barrett and Permit No. WY0051373, is issued to Merit Energy Company.
2. The Petitioners withdrew their appeal to WYPDES Permit No. WY0051373 and it was dismissed by the Order dated September 26, 2006.
3. The EQC issued separate decisions for the Palm Tree and the Big Porcupine Project permits. The Palm Tree Unit permit no. WY0051217 has been decided in another order dated February 28, 2007.
4. On April 5, 2004, the Wyoming Department of Environmental Quality, Water Quality Division (DEQ) issued National Pollution Discharge Elimination System (NPDES) Permit No. WY0051233 (the Big Porcupine Project Permit) to Bill Barrett Corporation (BBC). The permit imposed effluent limits of 2000 micromhos/cm for specific conductance (EC), a Sodium Absorption Ratio (SAR) limit of 10, and pH limits between 6.5 and 8.5. Flow is limited to 3.4 million gallons per day (MGD) under the Big Porcupine Project Permit.
5. BBC began discharging under the Big Porcupine Project Permit in December of 2004. At its

peak, the Big Porcupine Project discharged 0.3782 MGD in March of 2005. As of June 2006, the Big Porcupine Project was discharging 0.1456 MGD. Discharge is in compliance with the effluent limitations placed on both permits.

6. The Big Porcupine Project, specifically, discharges from four outfalls upstream of the North Antelope Rochelle Coal Mine in the Porcupine drainage. Water discharged under the permit flows into four large mine collection reservoirs built to withstand very large storm events. Downstream of the reservoirs, Porcupine Creek no longer exists as the mine has removed the overburden and coal which once formed the Porcupine drainage and alluvium. Water in the reservoirs is used by the mine for dust suppression and other mine operations. Water discharged under the Big Porcupine Permit cannot move downstream of the reservoirs and mine site, either on the surface or through the alluvium. The mine is approximately 32 miles upstream of the 4W Ranch.
7. On June 2, 2004, the Appellants, owners of the 4W Ranch, which uses water from the Cheyenne River for irrigation when available, appealed the issuance of the Big Porcupine Project Permit.
8. Appellants brought five claims before the Council:
 - That the permit violates Wyoming Water Quality Rules and Regulations (WQRR), Chapter 1, Section 20, which protects against “measurable decrease in crop or livestock production.”
 - That the permit violates WQRR, Chapter 1 Section 8(a)(ii) standards that protect existing uses from new sources of pollution.
 - That the permit violates WQRR, Chapter 1 standards for the prevention of “esthetic degradation.”
 - That the permit violates its own terms which prohibit injury to private property or invasion of personal rights.
 - That the permit impairs existing water rights at the 4W Ranch.
9. To date, Appellants have observed no change in surface flows of the Cheyenne River Attributable to discharge under the BBC permit. Appellants have observed no measurable decrease in crop production attributable to discharge under the BBC permit. Appellants presented no evidence that water discharged under the BBC permit reaches the 4W Ranch on the surface or through the alluvium.

CONCLUSIONS OF LAW

Appellants have failed to meet their burden to show that the Big Porcupine Project Permit

has caused or will cause a measurable decrease in crop or livestock production at the 4W Ranch. Appellants have failed to demonstrate that the permit is not protective of existing uses, that the permit injures private property rights, or that the permit impairs existing water rights at the 4W Ranch. Appellants admit that no standard for "esthetic degradation" exists in the WQRR. Therefore, Appellants have failed to meet their burden to show cause why the Big Porcupine Project Permit should be modified.

IT IS HEREBY ORDERED that Permit No. WY0051233, the Big Porcupine Project Permit, is **AFFIRMED**.

DATED this 28th day of February, 2007.



Jon Brady, Hearing Examiner

CERTIFICATE OF SERVICE

I, Kim McGee, certify that at Cheyenne, Wyoming, on the 5th day of March, 2007, I served a copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER** by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Hadassah Marie Reimer
Holland & Hart, LLP
2515 Warren Avenue, Ste. 450
Cheyenne, WY 82001

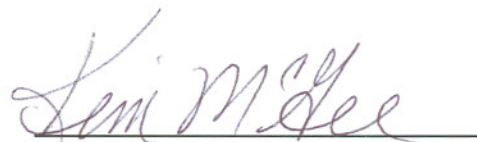
Robert L. Harshbarger
Jean Sherwin Harshbarger
1162 Lynch Road
Newcastle, WY 82701

John A. Sundahl
Sundahl, Powers, Kapp & Martin
1725 Carey Avenue
P.O. Box 328
Cheyenne, WY 82003-0328

also to the following persons via interoffice mail:

Mike Barrish
Office of Attorney General
123 State Capitol
Cheyenne, WY 82002

John Wagner
Administrator
Water Quality Division
122 West 25th Street
Herschler Building
Cheyenne, WY 82002



Kim McGee, Executive Assistant
Environmental Quality Council
122 W. 25th Street,
Herschler Bldg., Rm. 1714
Cheyenne, WY 82002
Tel: (307) 777-7170
Fax: (307) 777-6134