

FILED

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Jim Ruby, Executive Secretary
Environmental Quality Council

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

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 WYPDES)
PERMIT NO. WY0054364)

Docket No. 09-3805

PETITIONERS' RESPONSE TO PENNACO ENERGY'S MOTION TO DISMISS

Petitioners, JOHN D. KOLTISKA, AC RANCH INC., PRAIRIE DOG RANCH, INC., AND PRAIRIE DOG WATER SUPPLY COMPANY, by and through their counsel Kate M. Fox and J. Mark Stewart respectfully submit their response to Pennaco Energy Inc.'s (Pennaco) Motion to Dismiss. Pennaco argues that the Petitioners' petition must be dismissed because the Environmental Quality Council (EQC) lacks the authority to review permits issued by the Department of Environmental Quality. Pennaco's argument is without merit and for the reasons stated below, its motion should be denied.

ARGUMENT

A. The EQC Has Already Rejected Pennaco's Argument

The EQC has consistently rejected this argument, most recently in the contested case *In the Matter of the Appeal of Clabaugh Ranch, Inc., From WYPDES Permit No. WY004969* (EQC Docket 08-3802). The EQC expressly and cogently rejected this argument in the contested case

encaptioned *In the Matter Of: Basin Electric Power Cooperative Dry Fork Station, Air Permit CT-4631* (EQD Docket 07-2801). Ex. 1. Although the latter contested case involved protest of an air quality permit, Pennaco's argument here – i.e. that WYO. STAT. § 35-11-802 authorizes the permit applicant and no one else to bring a contested case appeal to the EQC – is essentially the same as that propounded by Basin Electric Power Cooperative. Pennaco Brief at 2. The EQC's reasoning in its order denying Basin's motion to dismiss is equally applicable here and, with the additional argument provided below, Petitioners adopt and incorporate that reasoning.

B. Pennaco's Interpretation Is Not In Harmony with the EQA and Would Lead to Absurd Results

Pennaco's argument that WYO. STAT. § 35-11-802 authorizes only the permit applicant to bring a contested case appeal before the EQC is inconsistent with WYO. STAT. § 35-11-112 and would render a large portion of that statute meaningless. As Pennaco correctly notes, the Environmental Quality Act cannot be read to render any portion meaningless, and the provisions of the Act must be read in harmony. Pennaco's Brief at 5 (citing *Frost Constr. Co. v. Dodson (In re Estate of Frost)*, 155 P.3d 1031 (Wyo. 2007)). Application of these rules of statutory construction leads to the conclusion the Council has jurisdiction to decide this permit appeal. Pennaco argues that there is no right to review before the EQC unless the legislature has expressly authorized the agency. Pennaco Brief at 6-7, 8. WYO. STAT. §§ 35-11-802 is entitled "Refusal to grant permits; applicant's rights" and states in pertinent part that "If the director refuses to grant any permit under this act, the applicant may petition for a hearing before the council to contest the decision." By its clear language Section 802 provides permit applicants the right to EQC review only in the case where the director has refused to grant a permit. On the other hand, Section 112(a)(iv) gives the EQC much broader authority -- to "Conduct hearings in

any case contesting the grant, denial, suspension, revocation or renewal of any permit, license, certification or variance authorized or required by this act.”

“Statutes relating to the same subject or having the same general purpose must be considered and construed in harmony.” *Frost*, 155 P.3d at 1034. Furthermore,

Statutes must be construed so that no portion is rendered meaningless.... Interpretation should not produce an absurd result.... We are guided by the full text of the statute, paying attention to its internal structure and the functional relation between the parts and the whole.... Each word of a statute is to be afforded meaning, with none rendered superfluous.... Further, the meaning afforded to a word should be that word's standard popular meaning unless another meaning is clearly intended.... If the meaning of a word is unclear, it should be afforded the meaning that best accomplishes the statute's purpose.... We presume that the legislature acts intentionally when it uses particular language in one statute, but not in another.... **If two sections of legislation appear to conflict, they should be given a reading that gives them both effect.**

Worker's Compensation Claim of Decker v. State ex rel. Wyoming Medical Com'n, 191 P.3d 105, 118 (Wyo. 2008)(emphasis added).

The only way to read these two provisions in harmony and to give effect to both provisions as well as to every word, clause and sentence in the act is to conclude that the permit applicant may appeal permit denial under Section 802, and in addition, a broader category of parties may appeal the permit grant, denial, suspension, revocation or renewal. The interpretation put forth by Pennaco would lead to absurd results. Under its interpretation, Pennaco could appeal permit denial to the EQC, but not permit suspension or revocation. There is no logic to such a distinction. The legislature created the EQC because it has special expertise to address matters such as these permit issues, and it would be absurd to conclude that expertise¹

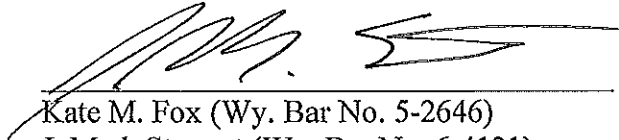
¹ “An agency created by the legislature to perform a specific function is considered to have special expertise.” *William F. West Ranch, LLC v. Tyrrell*, 2009 WY 62, ¶ 11, 206 P.3d 722, 728-29 (Wyo. 2009) (citing *Rissler & McMurry Co. v. State*, 917 P.2d 1157 (Wyo. 1996).

should be applied only to denial of permits, and not to their grant, suspension, revocation or renewal.

CONCLUSION

For the reasons set forth above and in the EQC's own precedent, Pennaco's motion to dismiss should be denied.

Dated this 30th day of October, 2009.



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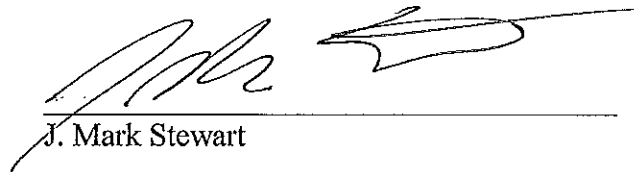
CERTIFICATE OF SERVICE

I certify that on the 30th day of October, 2009, I served a true and correct copy of the foregoing by hand delivery to:

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