

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

APR 07 2005

Terri A. Lorenzon, Director  
Environmental Quality Council

IN THE MATTER OF THE APPEAL AND )  
REVIEW OF THE DECISION REGARDING )  
THE RECLASSIFICATION OF EIGHT MAIN )  
STREAM DRAINAGES TO POWDER RIVER )  
AND OTHER TRIBUTARIES IN THE )  
POWDER RIVER BASIN, DATED )  
DECEMBER 22, 2004 )

Docket Number 05-3203

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**OPPOSITION TO "PETITION FOR REVIEW,  
NOTICE OF APPEAL AND  
REQUEST FOR CONTESTED CASE HEARING"**

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Kennedy Oil, a Wyoming corporation, and Yates Petroleum Corporation, by and through their undersigned counsel, herewith file and serve their Opposition to the "Petition for Review, Notice of Appeal and Request for Contested Case Hearing" filed and served by Dennis M. Kirven on behalf of several landowners on or about the 24<sup>th</sup> day of February, 2005.

**Motion to Dismiss**

Kennedy Oil ("Kennedy") and Yates Petroleum Corporation ("Yates") herewith move the Council to dismiss the Petition for Review because it was filed untimely.

The final determination by the Administrator of the Water Quality Division bears a date of December 22, 2004, and bears a date of December 23, 2004, on the second page of the decision. See Appendix A attached hereto.

Chapter 1, Section 16 of the Council's Rules of Procedure, Subsection A, states as follows:

Unless otherwise provided by these rules or the Environmental Act, all

appeals to council from final actions of the administrators or director shall be made within 60 days of such action.

Regardless of whether the decision of the administrator was dated December 22, December 23 or December 27, 2004, the notice of appeal was not timely filed. Regardless of which of those dates constitutes the first day of the 60-day period, all of the 60 days expired prior to the date that Mr. Kirven signed the petition for review, which was February 24, 2005.

Counsel for the Petitioners may contend that Rule 6, W.R.C.P., provides an extension of time for service by mail. This argument was rejected in the context of administrative appeals in *Fullmer v. Wyoming Employment Security Commission*, 858 P. 2d 1122 (Wyo. 1993) and in *Antelope Valley Improvement District v. State Board of Equalization*, 999 P. 2d 563 (Wyo. 1999).

Accordingly, the "Petition for Review" should be dismissed.

### **Answer to Petition for Review**

In the event that the petition is not dismissed as being untimely, Kennedy Oil submits its answer in response to the petition as follows:

1. The "reasons for appeal" stated in the Petition for Review and Notice of Appeal fail to state a basis upon which the Council can grant relief.
2. The allegations stated in Section 1 of the reasons for appeal are denied.
3. The allegations stated in Section 2 of the reasons for appeal are denied.
4. The allegations stated in Section 3 of the reasons for appeal are denied.
5. The allegations stated in Section 4 of the reasons for appeal are denied.
6. The allegations stated in Section 5 of the reasons for appeal are denied.
7. The Petitioners lack standing to complain of any injury to their interests. It is noted in the Administrator's decision: "All of these Class 4 drainages will be protected for recreation, wildlife, agriculture, industry and scenic value use." Accordingly, there is no injury to the Petitioners resulting from the Administrator's decision.
8. The Administrator's final determination is fully supported in fact and in law.

Wherefore, Kennedy and Yates pray that the Council dismiss the "Petition for Review" with prejudice, and for such other relief as is just and appropriate.

Dated this 6 day of April, 2005.



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**CERTIFICATE OF SERVICE**

I, Randall T. Cox, hereby certify that on the 6 day of April, 2005, I did cause a true and correct copy of the foregoing to be deposited in the U.S. Mail, postage prepaid, addressed to each of the following:

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