

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

FILED

JUL 13 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE APPEAL)
OF POWDER RIVER BASIN RESOURCE)
COUNCIL, BERNADETTE BARLOW,)
BERNADETTE BARLOW TRUST,)
WILLIAM L. BARLOW TRUST AND)
ERIC BARLOW FROM WYPDES)
PERMIT NO. WY0052299)

Docket No. 09-3802

ORDER DENYING PETITIONERS' MOTION FOR SUMMARY JUDGMENT

This matter came before the Environmental Quality Council ("EQC") on May 13, 2010, for oral argument on a motion for summary judgment filed by Powder River Basin Resource Council, Bernadette Barlow, Bernadette Barlow Trust, William L. Barlow Trust and Eric Barlow ("Petitioners"). EQC members present at the motion hearing included Dennis M. Boal, John N. Morris, Presiding Officer Thomas Coverdale, Chairman Tim Flitner, Dr. Fred Ogden and Catherine Guschewsky. Jim Ruby, Executive Secretary of the EQC and Marion Yoder, Senior Assistant Attorney General were also present. The Petitioners appeared by and through their counsel, Kate M. Fox and Mark Stewart. Respondent permittee Bill Barrett Corporation ("Barrett") appeared by and through its counsel, Jack D. Palma II. Respondent Department of Environmental Quality, Water Quality Division ("DEQ"), appeared by and through its counsel, Senior Assistant Attorney General, John S. Burbridge.

The Council, having considered Petitioners' motion for summary judgment and the responses thereto, oral argument of the parties, and being otherwise fully advised in the premises, hereby finds and orders:

FINDINGS:

1. The EQC has jurisdiction over the subject matter and the parties to this contested case proceeding under WYO. STAT. ANN. § 35-11-112 and Chapter I, Section 16 of the DEQ Rules of Practice & Procedure.

2. The Wyoming Rules of Civil Procedure apply to this contested case proceeding before the EQC. *See* Chapter II, Section 14 of the DEQ Rules of Practice & Procedure.

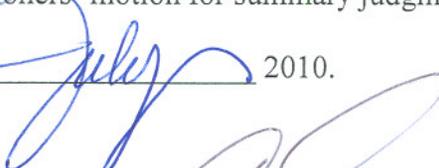
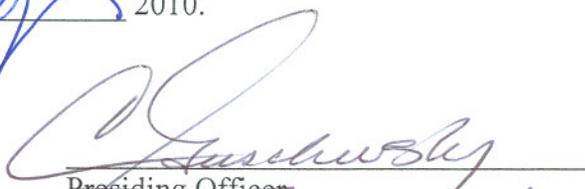
3. Rule 56 of the Wyoming Rules of Civil Procedure provides for summary judgment on motions where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law.

4. Petitioners are not entitled to summary judgment as there are genuine issues of material fact that need to be determined in this matter.

ORDER:

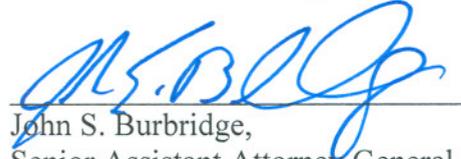
It is hereby ordered that Petitioners' motion for summary judgment is DENIED.

DATED this 8 day of July 2010.



~~Presiding Officer~~
CATHY BUSCHEWITZ, Acting Chair

APPROVED AS TO FORM:

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY



John S. Burbridge,
Senior Assistant Attorney General
Attorney General's Office
123 Capitol Avenue
Cheyenne, Wyoming 82002

FOR BILL BARRETT CORPORATION



Jack D. Palma II
Holland & Hart, LLC
P.O. Box 1347
Cheyenne, Wyoming 82003-1347

FOR POWDER RIVER BASIN RESOURCE
COUNCIL, BERNADETTE BARLOW,
BERNADETTE BARLOW TRUST,
WILLIAM L. BARLOW TRUST AND
ERIC BARLOW



Mark Stewart
Davis & Cannon, LLP
422 West 26th Street
P.O. Box 43
Cheyenne, Wyoming 82003

CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 13th day of July, 2010, I served a copy of the foregoing ORDER DENYING PETITIONERS' MOTION FOR SUMMARY JUDGMENT by electronic mail to the following:

Jack Palma
Holland & Hart, LLC
jpalma@hollandhart.com

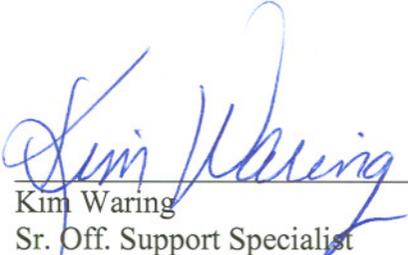
Lynda Zeringue
Holland & Hart, LLC
lzingue@hollandhart.com

Kate Fox
Mark Stewart
Attorneys for Protestants
Davis and Cannon, LLP
mark@davisandcannonchey.com

John Burbridge
Sr. Asst. Attorney General
jburl@state.wy.us

Amanda Kroul
Attorney General's Office
akroul@state.wy.us

John Corra
Director, DEQ
jcorra@wyo.gov



Kim Waring
Sr. Off. Support Specialist
Environmental Quality Council
122 W. 25th, Rm. 1714
Herschler Bldg.
Cheyenne, WY 82002
Phone: 307-777-7170
FAX: 307-777-6134