

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

FILED

OCT 06 2009

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 STAY

NOW ON THIS 6th day of October 2009 after review of the Respondent, Bill Barrett Corporation, informal request for stay contained in their status report and the response by the Petitioner the Presiding Officer finds as follows:

1. The Petitioner filed a petition and request for hearing on January 21, 2009.
2. The Respondent, Department of Environmental Quality filed a response on February 23, 2009.
3. The Respondent, Bill Barrett Corporation, after an extension of time to respond, filed its response on March 30, 2009.
4. The Parties filed a joint stipulation for stay of the proceedings pending the outcome of a rule making proceeding pending before the Council, on April 6, 2009. Said request was granted by the Presiding Officer.
5. On September 23, 2009, the Department filed a letter indicating its desire to withdraw from the Council's consideration the rule package referenced in paragraph 4 above.
6. The letter from the Department fails to indicate any time line for reintroduction of any new rule package dealing with the same subject matter as that contained in the current rule package. Further the letter from the Department only outlines the

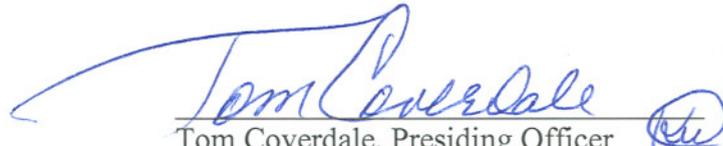
organization of a work group to work on the issue.

7. On October 1, 2009 the Respondent Bill Barrett Corporation filed the required status report and within that document requested an extension of the stay.
8. On October 2, 2009, the Petitioner filed their status report and objected to the stay.
9. The Respondent, Bill Barrett Corporation fails to allege any substantive reasons or reasons that would reach the level of good cause to stay these proceedings any further.
10. There are approximately 172 similar permits issued that will be up for renewal between now and December of 2014. Sixty-Six of those come up for renewal between now and December of 2010. Another Thirty-five come up for renewal between now and December 2011 and Fifty-nine more come up for renewal by December 2012. Based upon the Department's actions regarding withdrawal of Docket #08-3101, it is likely that many of those permits will be appealed because of the methodology used to determine whether or not they are protective of agricultural uses.
11. There is no indication in this record or the record in Docket #08-3101 when or if the Department will bring any rule package for consideration by the Council which will relate to the same or similar subject matter as the rule package currently contained in Docket #08-3101.
12. The Respondent fails to point out any prejudice to their case by not staying these proceedings.
13. However, the Petitioner has pointed out that the entry of a stay would continue to

allow Bill Barrett Corporation to continue to discharge water within the drainage,
which from the current record would prejudice the case of the Petitioner.

WHEREFORE, the Respondent's, Bill Barrett Corporation, request for stay is DENIED.

SO ORDERED this 6th day of October 2009.


Tom Coverdale, Presiding Officer
Environmental Quality Council

CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 6th day of October, 2009, I served a copy of the foregoing ORDER DENYING STAY by electronic mail to the following:

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