

**FILED**

JUL 27 2001

Terri A. Lorenzon, Director  
Environmental Quality Council

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

IN THE MATTER OF )  
TRITON COAL COMPANY, LLC, ) DOCKET NO. 01-4602  
BUCKSKIN MINE, )  
PERMIT NO. 500-T5 TFN 3 5/322 )

**ORDER**

The Department of Environmental Quality (DEQ), Land Quality Division (LQD) filed a motion to dismiss Triton Coal Company's (Triton) petition for review on April 3, 2001. At a public meeting in Lander, Wyoming on June 21, 2001, the Environmental Quality Council heard oral argument from John S. Burbridge, Assistant Attorney General, representing LQD and Jerrold A. Long, from Holland and Hart, representing Triton. The Council members present at the meeting were Wendy Hutchinson, Robert Rawlings, Dr. Jason Shogren, Thomas Dunn, Olin D. Sims, and Lisa M. Lindemann. Terri A. Lorenzon, attorney for the Council, was also present at the meeting. The Council having reviewed the record and being fully advised finds and concludes as follows.

**FINDINGS OF FACT**

1. Triton owns and operates Buckskin Mine, DEQ Permit No. 500-T5, TFN 3 5/322.
2. Triton applied for a permit amendment to extend mining into a new tract lease, Hay Creek Tract. Triton then requested a pre-application alluvial valley floor (AVF) determination from LQD.
3. LQD determined that an AVF was present in the Hay Creek Tract and instructed Triton to proceed with an application incorporating the AVF requirements specified in the statute, regulations, and guidelines.
4. If an AVF exists in a proposed mine tract, the Environmental Quality Act (the Act), §35-11-406(n)(v) provides that a mine permit must meet the unique requirements for protection of the features of an AVF or the permit will be denied.
5. LQD filed a motion to dismiss arguing that the Council does not have jurisdiction in this matter and the Council can not hear this appeal until the application is processed. LQD argues that the Council can only hear final agency actions and the AVF determination is a pre-application decision that is not final.


6. The United States Supreme Court has established a two-part test to determine if an agency action is final. First, the action must mark the consummation of the agency's decision-making process. Second, the action must be one by which the rights or obligations have been determined or from which legal consequences flow. *Bennett v. Spear*, 520 U.S. 154 (1997); *Public Service Company of Colorado v. United States Environmental Protection Agency*, 225 F.3d 1144 (2000).
7. The LQD has required a substantial revision to the Triton permit amendment application to accommodate the AVF decision. Additional monitoring and analysis is now required to make the necessary changes to the mining and reclamation plan.
8. If Triton does not comply with the AVF determination, LQD will regard the mining application as incomplete and LQD will take no further action on the permit application. LQD will not make a decision on the mine permit application unless Triton first complies with the AVF decision.
9. The LQD argument that a decision on the permit must be made before an appeal to the Council can be filed ignores the fact that Triton's permit would languish unless Triton proceeds with development of the AVF portion of the permit. The LQD treats the AVF decision as a final decision, but then seeks to frustrate Triton's ability to seek a timely review of the decision.
10. The AVF determination by LQD has an immediate and significant impact on Triton and unless the AVF determination is reviewed at this time, Triton will continue to expend time and resources to develop a permit that it will certainly contest. If mining in the amendment area is critical to Triton's ongoing operations, the delay in reviewing the AVF decision may also cause economic impact on Triton beyond the resources spent on revising the permit amendment.

### CONCLUSIONS OF LAW

1. The Environmental Quality Council has jurisdiction over the parties to and the subject matter of this proceeding. Wyo. Stat. §35-11-112.
2. Triton's petition for the Council's review of LQD's AVF determination is properly before the Council. Wyo. Stat. §35-11-112(a)(iii), instructs the Council to "Conduct hearings in any case contesting the administration or enforcement of any law, rule, regulation, standard or order issued or administered by the department or any division thereof."

**IT IS HEREBY ORDERED**, LQD's motion to dismiss is denied. The parties shall promptly submit proposed hearing dates.

**DATED** this 24<sup>th</sup> day of July, 2001.

  
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