

Drainages retain protection

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Three tributary drainages of Crazy Woman Creek, between Kaycee and Buffalo, will continue to have basic environmental protection, after two Wyoming conservation groups won a ruling last month against the Wyoming Department of Environmental Quality.

The judgment by the state Environmental Quality Council reverses a DEQ action to downgrade the water quality classification for the drainages so the streams would have no environmental protection for aquatic life. The reclassification was at the behest of Kennedy Oil in Gillette, which wanted to discharge coal-bed methane water into the drainages.

DEQ had reclassified the Crazy Woman Creek tributaries from Class 3B to Class 4B in February 2006. Class 3B waters sustain aquatic life, and Class 4B waters do not.

"It was a nice win," said Steve Jones, water attorney for the Wyoming Outdoor Council.

Jones and Jill Morrison of the Powder River Basin Resource Council said they were pleasantly surprised that the Environmental Quality Council -- a citizen board appointed by the governor -- issued a summary judgment on Sept. 26 without hearing any arguments or testimony from either side. The vote was 5-2.

Aquatic life

The tributaries -- Morris Draw, Unnamed Draw and Short Unnamed Draw, all in Johnson County -- are intermittent and ephemeral streams -- streams that don't run all year -- with enough water to normally support and sustain aquatic life including invertebrates, amphibians and other flora and fauna.

"I found three species of turtle, one species of toad and two species of frog," said Bill Turner, a herpetologist with the Wyoming Game and Fish Department.

All told, there's about nine acres of wetlands in the tributary drainages. The three tributaries run through a ranch owned by Priscilla Welles.

"The draws under discussion support a diversity of life," Welles said. "At this point, they are untouched, virgin sage grasslands. They serve as food and shelter for wildlife, livestock, aquatic species and -- it must be mentioned -- are important sage grouse habitat."

Welles said the focus should be on avoiding environmental harm, because they have value for wildlife, as a carbon sink for carbon dioxide and as open space.

She faulted the state agencies that are supposed to safeguard the environment.

"Responsible landowners attempt to be good stewards of the land. How is this achievable under such outside pressures?" she asked.

Typically, these streams have been protected for aquatic life, such as frogs, toads, amphibians, aquatic invertebrates, and wetland plants, under DEQ water quality standards.

"But this has caused some problems for the coal-bed methane and oil and gas industry, since they would prefer to discharge produced water without having to comply with aquatic life standards," Jones said. "DEQ was usually granting the industry's request and reclassifying intermittent and ephemeral streams (from Class 3B) to Class 4B, which eliminated the standards for aquatic life."

Jones said DEQ has been working to make things easier for industry, reclassifying 20 streams to Class 4B status in the past six years -- a list that can be seen on the DEQ's Web site.

The significance of this case, Jones said, is that it is the first time that the Environmental Quality Council has had a chance to decide, in a contested case, on what DEQ has been doing.

"The Environmental Quality Council has made it clear that as long as we can show that aquatic life either currently exist in these streams, or an aquatic life use is attainable or feasible, then such streams must be classified as Class 3 -- a class of stream that mandates aquatic life standards be applied," Jones said.

Industry response

Since Kennedy Oil's initial petition, Kennedy Oil has sold its coal-bed methane leases to Anadarko Petroleum and has no further interest in how the Crazy Woman Creek tributaries are classified.

According to Paula Beasley, spokeswoman for Anadarko, the Crazy Woman Creek tributaries are not being eyed for coal-bed methane water discharge.

"We're pumping our CBM water via a pipeline to a reservoir on Salt Creek," she said. "We're committed to having as small a footprint as possible."

Still, Morrison and Jones said that when reducing protection for Wyoming drainages, DEQ must meet higher standards of evidence to justify reclassification.

John Wagner, DEQ's administrator for water quality, said his office was reviewing the ruling and will decide what to do next: ask the council to reconsider, accept the decision or see whether any internal rule changes are in order.