

APPENDIX I

ENVIRONMENTAL QUALITY COUNCIL RULING RESPECTIVE OF
HAY CREEK TRACT AS AN ALLUVIAL VALLEY FLOOR

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FEB 14 2002

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF)
TRITON COAL COMPANY, LLC,)
BUCKSKIN MINE,) Docket No. 01-4602
PERMIT NO. 500-T6, TFN 3 5/322)

ORDER

On September 17 and 18, 2001, the Environmental Quality Council ("Council") held public hearing to reconsider a determination by the Department of Environmental Quality ("DEQ"), Land Quality Division ("LQD") that an alluvial valley floor, as defined by Wyo. Stat. 35-11-103(e)(xviii), exists on the Hay Creek Tract of the Buckskin Mine permit area, in Campbell County, near Gillette, Wyoming. Triton Coal Company, LLC, was represented by Edward W. Harris and Jerrold A. Long of Holland & Hart, and the DEQ was represented by John Burbridge, Assistant Attorney General. Council members present at the hearing were Robert Rawlings, Hearing Examiner, Thomas Dunn, Lisa Lindemann, Olin Sims, Jason Shogren, and Wendy Hutchinson. Also present for the Council was Terri A. Lorenzon, attorney for the Council.



On September 18, 2001, the Council, by a unanimous vote of the Council members, reached a decision in this matter. The Council hereby issues the following findings of fact and conclusions of law.

Findings of Fact

1. Triton Coal Company, LLC (Triton) owns and operates the Buckskin coal mine located in Campbell County, near Gillette, Wyoming.
2. On November 10, 2000, Triton applied for a permit amendment to extend the Buckskin Mine into the Hay Creek Tract. Prior to submitting that application, Triton requested a pre-application determination, pursuant to Wyoming Coal Rules and Regulations, Chap. 3, Section 2(a), of the presence of alluvial valley floors in the Hay Creek Tract.
3. After reviewing the material submitted by Triton with respect to the Hay Creek Tract, the LQD determined that 33.55 acres along Hay Creek constituted an alluvial valley floor (AVF).
4. Triton filed a petition with the Council on March 15, 2001, to review the decision of the LQD that 33.55 acres of AVF were present within Triton's mine permit area.

- 5. The Act defines an AVF as: " the unconsolidated stream laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities [.]" Wyo. Stat. § 35-11-1-3(e)(xviii).
- 6. The 33.55 acres determined by the LQD to constitute an AVF are underlain by unconsolidated stream laid deposits and sufficient water is present for subirrigation.
- 7. Regulations adopted by the LQD to implement the provisions of the Act define "subirrigation or flood irrigation agricultural activities" as follows:

'Subirrigation or flood irrigation agricultural activities' means the past and present use of any tract of land for the successful production of animal or vegetable life, based on regional agricultural practices, where the use is enhanced or facilitated by subirrigation or flood irrigation. These uses include, but are not limited to, the pasturing, grazing, and the cropping, cultivation, or harvesting of agriculturally useful plants whose production is enhanced or facilitated by the availability of water from subirrigation or flood irrigation. These uses do not include agricultural practices which do not benefit from the availability of water from subirrigation or flood irrigation.' (emphasis added)

Wyoming Coal Rules and Regulations, Chapter 1, Section (co).

- 8. The 33.55 acres consist of riparian bottomland habitat, dominated by wetland plant species. The predominant plant species in this area are prairie cordgrass (*Spartina pectinata*), common spikeweed (*Eleocharis palustris*), and American bulrush (*Scirpus pungens poly*). These plants provide poor to fair livestock forage while the vegetation in the upland and lowland prairie habitats provide forage of higher overall quality than that present in these riparian bottomlands.
- 9. The Hay Creek Tract consists of undeveloped rangeland, where the primary use is grazing cattle. The regional agricultural practice in the area is to place cattle in large fenced pastures that consist of upland and lowland prairie habitats, with access to small riparian areas to ensure water availability. The ranchers in this area do not attempt to specially manage the riparian areas separately from the other habitats.
- 10. Evidence shows cattle will over-utilize upland and lowland habitats before grazing the riparian plant species listed in paragraph 8 above. Therefore, based on past and present use of this land and regional agricultural practices, the riparian bottomland species are not agriculturally useful plants.



APPROVED JUN 13 '02

Conclusions of Law

1. Surface Coal mining in Wyoming is governed by the Wyoming Environmental Quality Act ("Act"). Wyo. Stat. § 35-11-101, *et seq.*
2. The Council has jurisdiction over the parties to and the subject matter of this proceeding. Wyo. Stat. § 35-11-112.
3. The Act requires surface coal mines to obtain permits from DEQ. Wyo. Stat. § 35-11-401(d).
4. The Act contains specific provisions and requirements with respect to areas called alluvial valley floors and the Council has adopted regulations governing alluvial valley floors. Wyo. Stat. §35-11-103(e)(viii); Wyoming Coal Rules and Regulations, Chapt. 1, Section 2(co) and Chapt. 3, Section 2.
5. For a streambed to be designated an alluvial valley floor, it must contain three components: First, the streambed in question must overlie unconsolidated stream laid deposits. Second, there must be sufficient water to provide for flood irrigation or subirrigation. Finally, that flood irrigation or subirrigation must enhance or facilitate past or present use, based on regional agricultural practices.
6. After conducting an exhaustive review of the facts and law during the contested case hearing, the Council concludes that the 33.55 acres the DEQ determined constitute an alluvial valley floor do not enhance or facilitate the past or present use, based on regional agricultural practices. Therefore, the 33.55 acres do not constitute an alluvial valley floor as that term is defined in the applicable statutes and regulations, and Triton should not be required to satisfy those statutory and regulatory requirements that pertain to alluvial valley floors.

ORDER

The decision of the Department of Environmental Quality designating the 33.55 acres in the Hay Creek Tract as an alluvial valley floor is overturned.

IT IS SO ORDERED THIS 11 day of February, 2002.



Robert Rawlings
Robert Rawlings, Hearing Examiner
ENVIRONMENTAL QUALITY COUNCIL
Herschler Bldg., Rm. 1714
122 West 25th Street
Cheyenne, WY 82002
Tel: (307) 777-7170
Fax: (307) 777-6134

CERTIFICATE OF SERVICE

I, Terri A. Lorenzon, certify that at Cheyenne, Wyoming, on the 14th day of February 2002, I served a copy of the foregoing ORDER by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Edward W. Harris
Jerrold A. Long
HOLLAND & HART LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001

and also to the following persons via interoffice mail:

Dennis Hemmer, Director
Department of Environmental Quality
122 W. 25th Street, Herschler Building
Cheyenne, WY 82002

Rick Chancellor, Administrator
Land Quality Division
122 W. 25th Street, Herschler Bldg.
Cheyenne, WY 82002

John Burbridge
Senior Assistant Attorney General
Dept. of Environmental Quality-LQD
122 W. 25th Street, Herschler Bldg.
Cheyenne, WY 82002



Terri A. Lorenzon
Terri A. Lorenzon, Esq.
Director

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