

ENROLLED ACT NO. 89, HOUSE OF REPRESENTATIVES

SIXTIETH LEGISLATURE OF THE STATE OF WYOMING  
2009 GENERAL SESSION

AN ACT relating to the Environmental Quality Act; eliminating the authority of the environmental quality council to designate lands as "very rare" or "uncommon"; providing a procedure for designation of lands as "very rare" or "uncommon"; amending the basis for denying a mining permit for lands designated as "very rare" or "uncommon"; making a conforming amendment; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 35-11-112(a)(v), 35-11-406(m)(iv) and 35-11-1001(b) are amended to read:

**35-11-112. Powers and duties of the environmental quality council.**

(a) The council shall act as the hearing examiner for the department and shall hear and determine all cases or issues arising under the laws, rules, regulations, standards or orders issued or administered by the department or its air quality, land quality, solid and hazardous waste management or water quality divisions. At the council's request the office of administrative hearings may provide a hearing officer for any rulemaking or contested case hearing before the council, and the hearing officer may provide recommendations on procedural matters when requested by the council. Notwithstanding any other provision of this act, including this section, the council shall have no authority to promulgate rules or to hear or determine any case or issue arising under the laws, rules, regulations, standards or orders issued or administered by the industrial siting or abandoned mine land divisions of the department. The council shall:

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(v) ~~Designate~~ For purposes of W.S. 35-11-406(m)(iv), at the earliest date and to the extent possible, consider designation of those areas ~~of the state~~ which are very rare or uncommon and have particular historical, archaeological, wildlife, surface geological, botanical or scenic value. When areas of ~~privately~~ nonfederally owned lands are to be considered for such designation, the council shall give notice to the record owner and hold hearing thereon, within a county in which the area, or major portion thereof, to be so designated is located, in accordance with the Wyoming Administrative Procedure Act. The council shall submit a report containing its findings and recommendations to the state loan and investment board no later than thirty (30) days after the hearing. The state loan and investment board shall consider the council's report and shall approve or disapprove the council's recommendation on the designation of an area as very rare or uncommon. The approval or disapproval by the state loan and investment board shall be considered a final agency action and may be appealed pursuant to the Wyoming Administrative Procedure Act. No designation of a very rare or uncommon area shall be final until it has been approved by the state loan and investment board and the council has recorded notice of the designation in the office of the county clerk in each county where the land is located. No designation made prior to July 1, 2009 shall require approval by the state loan and investment board if the council records notice of the designation in the office of the county clerk in each county where the land is located by December 31, 2011;

**35-11-406. Application for permit; generally; denial; limitations.**

(m) The requested permit, other than a surface coal mining permit, shall be granted if the applicant

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demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. The director shall not deny a permit except for one (1) or more of the following reasons:

(iv) The proposed mining operation would irreparably harm, destroy, or materially impair any area that has been designated ~~by the council~~ in accordance with W.S. 35-11-112(a)(v) as a very rare or uncommon area and having particular historical, archaeological, wildlife, surface geological, botanical or scenic value;

**35-11-1001. Judicial review; temporary relief; conditions.**

(b) Any person having a legal interest in the mineral rights or any person or corporation having a producing mine or having made substantial capital expenditures and commitments to mine mineral rights with respect to which the state has prohibited mining operations because the mining operations or proposed mining operations would irreparably harm, destroy or materially impair an area that has been designated to be ~~of a unique and irreplaceable~~ very rare or uncommon and have particular historical, archeological, wildlife, surface geological, botanical or scenic ~~or natural~~ value, may petition the district court for the district in which the mineral rights are located to determine whether the prohibition so restricts the use of the property as to constitute an unconstitutional taking without compensation. Upon a determination that a taking has occurred the value of the investment in the property or interests condemned shall be ascertained and damages shall be assessed as in other condemnation proceedings.

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**Section 2.** This act is effective July 1, 2009.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk