

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED
APR 22 2010
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

DEPARTMENT OF ENVIRONMENTAL QUALITY/WATER
QUALITY DIVISION'S RULE 56.1 STATEMENT

The Department of Environmental Quality, Water Quality Division ("DEQ"), by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, sets forth the following facts as to which it is contended that there exists genuine issues to be tried.

1. A disputed fact regarding the contention contained in the Powder River Basin Resource Council's ("PRBRC") Motion for Summary Judgment is whether WYPDES permit WY0052299 effluent limits protect against a measurable decrease in crop and livestock production. (Ex. 4, at ¶¶ 5 & 6).

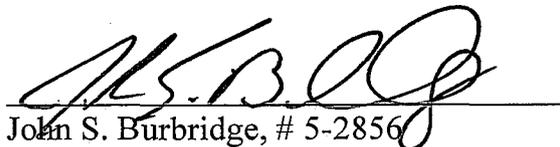
2. A disputed fact regarding the contention contained in PRBRC's Motion for Summary Judgment is whether the lack of a SAR limit for the outfalls in the contested Permit protects against a measurable decrease in crop and livestock production as Barrett cannot intentionally discharge water from its lowermost reservoirs. (Ex. 4, at ¶¶ 7, 8 & 9 and Ex. 6).

3. A disputed fact regarding the contention contained in PRBRC's Motion for Summary Judgment is whether discharges from Barrett's outfalls will cause a measurable decrease in crop or livestock production. (Ex. 6, at ¶¶ 4, 5 & 6).

4. A disputed fact regarding the contention contained in PRBRC's Motion for Summary Judgment is whether Tier 2 is even applicable in this case. Wyoming Water Quality Rule and Regulation, Ch. 2, § 5(c)(iii)(C)(IV).

Respectfully submitted this 22nd day of April, 2010.

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY



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CERTIFICATE OF SERVICE

I certify that the foregoing document was served by US. Mail, postage prepaid, and addressed correctly, to the following people on the 22nd day of April, 2010:

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