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**Jim Ruby, Executive Secretary
Environmental Quality Council**

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

IN THE MATTER OF THE)	
APPEAL OF POWDER RIVER)	
BASIN RESOURCE COUNCIL)	DOCKET NO. 09-3807
AND WILLIAM F. WEST RANCH,)	
LLC FROM WYPDES PERMIT)	
NO. WY0094056)	

**RESPONDENT'S MOTION TO DISMISS PETITIONERS' APPEAL AND MOTION
FOR SUMMARY JUDGMENT**

COMES NOW, Respondent, Stephens Energy Company, LLC (Stephens), through counsel, pursuant to Rule 12 of the Wyoming Rules of Civil Procedure,¹ moves to dismiss the appeal brought by the Powder River Basin Resource Council (PRBRC), and William F. West Ranch, LLC (West) (collectively, Petitioners), because Petitioners have failed to state a claim upon which relief can be granted. Wyo. R. Civ. P. 12(b)(6). In the event that the Wyoming Environmental Quality Council (EQC) does not dismiss this appeal, Respondent Stephens moves for summary judgment against Petitioners pursuant to Rule 56(b) of the Wyoming Rules of Civil

¹ Chapter II, Section 14 of the DEQ Rules of Practice & Procedure makes the Wyoming Rules of Civil Procedure generally applicable to matters before the EQC.

Procedure on all issues in this appeal because there is no issue of material fact regarding the issues raised by Petitioners' Appeal and Stephens is entitled to judgment as a matter of law.

I. Introduction

The Petitioners have challenged DEQ's issuance of WYPDES Permit No. WY0094056 (Permit) which authorizes Stephens to discharge water produced from coalbed methane (CBM) wells located in the Powder River Basin. Petitioners have challenged this Permit alleging, in pertinent part, that: (1) "the Permit authorizes discharges that will not maintain the water supply at a quality which allows continued use of the water for agricultural purposes without a measurable decrease in production;" (2) "Limitations on the effluent limit constituent EC and Sodium Adsorption Ratio (SAR) have the reasonable potential to adversely impact agricultural use of the receiving water[;]" and, (3) "The Permit conditions do not provide compliance with the applicable requirements of Wyo. Stat. Ann. 35-11-302 and the Water Quality Rules and Regulations...." Petition at 3.² Petitioners have no evidence, and have admitted they have no evidence, to substantiate any of the claims in the Petition.

As fully explained below, Petitioners have challenged the Stephens Permit without evidence of any kind.

- Neither Petitioners, nor their proffered expert,³ have ever inspected the three impoundments at issue, or taken any samples of the water or soils in and around the impoundments.

² Wyo. Stat. Ann. § 35-11-302 establishes the authority of the Administrator of the DEQ to recommend standards, rules, regulations or permits. In pertinent part, Wyo. Stat. Ann. § 35-11-302(a)(ii) authorizes the Administrator to establish "Effluent standards and limitations specifying the maximum amounts or concentrations of pollution and wastes which may be discharged into waters of the state." Here, the Petitioners have alleged that the Permit conditions are not in compliance with the applicable requirements of Wyo. Stat. Ann. § 35-11-302 and Chapter 2, Section 9(a)(vi) of the Water Quality Rules and Regulations. The DEQ's Water Quality Rules and Regulations state: "No permit may be issued when conditions of the permit do not provide compliance with applicable requirements of W.S. 35-11-02 and of these regulations." Ch. 2, Sec. 9(a)(vi).

³ See Stephen's Motion to Strike Testimony of Dr. Ginger Paige.

- Petitioners have no evidence that the impoundments do not fully contain all water discharges.
- Petitioners have no evidence that any water has ever breached or overtopped any one of the impoundments.
- Petitioners have no evidence that water has leaked, seeped, or left the impoundments in any way.
- Petitioners have no evidence that that the DEQ's issuance of the Permit has or will decrease their crop production.

Petitioners, and their proffered expert, concede this dearth of evidence in each of their depositions. Thus, by their own admissions, Petitioners are not adversely affected by the issuance of the Permit and this appeal must be dismissed.

The Petitioners' Appeal in this case is based entirely upon assumptions and speculation regarding perceived harms and the scientific opinion of Jan M. H. Hendrickx and Bruce A. Buchanan, *Expert Scientist Opinion on the Tier-2 Methodology* (May 2009) (Hendrickx and Buchanan Report). Petitioners' expert, Dr. Ginger Paige, conducted no scientific work, but has instead merely relied on the Hendrickx and Buchanan Report to form her proffered opinion that the methodology used by DEQ in establishing the effluent limits for WYPDES permits (Tier 2 methodology) is scientifically invalid. Allegations related to the Hendrickx and Buchanan Report carry no weight when Petitioners have no facts or analysis to can demonstrate harm from DEQ's issuance of the Permit. Further, the Hendrickx and Buchanan Report is inapplicable to this appeal because it only considered the establishment of effluent limits for surface discharges, not fully contained discharges, as is the case here. The Permit does not allow for the discharge of effluent into an ephemeral drainage, rather, it requires that the effluent be fully contained within three impoundments. The importance the Petitioners attempt to place on the Hendrickx and Buchanan Report to invalidate the Permit is based on a series of assumptions which the

Petitioners have no evidence or analysis to support. Dr. Paige's opinion and testimony should be ignored.

Petitioners appeal assumes that effluent has escaped from the impoundments and that such spill events have harmed them. The problem is, Petitioners have failed to show that a single spill events ever occurred, Petitioners have failed to provide any evidence that the effluent limits established by the Permit violate the applicable requirements of Wyo. Stat. Ann. § 35-11-302 and the Water Quality Rules and Regulations, Chapter 2, Sec. 9(a)(vi) or that the effluent limits would not be protective of their agricultural operations. The Petitioners would have the EQC assume that the allegedly invalid scientific methodology used by DEQ will result in effluent limits that violate the applicable requirements. Petitioners provide no evidence that the specific limits set by the Permit will cause any harm to agricultural use.

While Petitioners have repeatedly expressed concerns and dissatisfaction with effluent discharges from other CBM wells and harm to their property, Petitioners have no evidence, and have admitted that they have no evidence, suggesting that the water discharged by Stephens into its impoundments has contributed to that alleged harm. Petitioners have merely speculative and unsubstantiated alleged damages, with no evidence of immediate or substantial injury or damages. The EQC is not a place for groups such as PRBRC who are opposed to CBM development to file appeals. To bring a claim before the EQC, Petitioners must be able to establish that they are an adversely affected party by the DEQ's issuance of the Permit. The Petitioners cannot show that the effluent limits established by the Permit have caused any harm or violate the applicable regulations, and accordingly, the appeal should be dismissed.

II. Statement of Facts

1. The three impoundments described in the Permit were constructed in 2001. The DEQ authorized produced water discharges into these three impoundments in 2001 by Permit Nos. WY0045829 and WY0046469, and these impoundments have been in use since.

2. On May 6, 2009, the DEQ issued WYPDES Permit No. WY0094056 to Cedar Ridge, LLC,⁴ permitting discharge of its produced water into the three impoundments.

3. On July 2, 2009, Petitioners appealed DEQ's issuance of Permit No. WY0094056 to the EQC claiming, among other things, that the Permit:

- a. Authorizes discharge into Spotted Horse Creek. Petition at ¶ 3(f).
- b. Authorizes water discharge which would enter and cross the lands of the Wests. *Id.* at ¶ 3(g).
- c. Does not establish an effluent limit for the sodium adsorption rate (SAR). *Id.* ¶ 3(k).
- d. Authorizes “discharges that will not maintain the water supply at a quality which allows continued use of the water for agricultural purposes without a measurable decrease in production in violation of Water Quality Rules and Regulations, Chapter 1, Sec. 20.” *Id.* ¶3(p).
- e. Does not comply compliance with the applicable requirements of Wyo. Stat. Ann. § 35-11-302 and the Water Quality Rules and Regulations in violation of Water Quality Rules and Regulations, Chapter 2, Sec. 9(a)(vi). *Id.* ¶ 3(r).

⁴ On October 1, 2009, the EQC approved the substitution of Stephens for Cedar Ridge.

4. The Wests' property is located approximately 10 miles down stream from the three impoundments. The Permit requires that all effluent discharge be contained within three impoundments. Permit at 1. The Permit does not authorize discharge which would enter and cross the lands of the Wests.

5. Neither Petitioners, nor their proffered expert have visually inspected any of the three impoundments, tested any of the discharges, nor sampled and tested any of the water or soils in and around the impoundments. M. West Depo. at 8, B. West Depo. at 30 and Morrison Depo. at 43-44.⁵

6. Petitioners have no evidence that Stephens discharges water into Spotted Horse Creek or its ephemeral tributaries, because Stephens does not conduct its operations in such a manner. Petitioners have no evidence that Stephens discharges water that would enter or cross their land.

7. Petitioners have no evidence demonstrating that effluent has leaked, seeped or in any way escaped the impoundments. M. West Depo. at 8; B. West Depo. at 32; Morrison Depo. at 43-44; Paige Depo. at 20, lines 12-15. Petitioners have no evidence, as they admit, that Stephens has not fully complied with the terms of the Permit. M. West Dep. at 33.

8. Petitioners have no evidence, as they admit, that issuance of the Permit will cause a decrease in water quality of Spotted Horse Creek or crop production. B. West Depo. at 37, lines 12-15, M. West Depo. at 36, lines 2-13.

9. Petitioners admit they have not put forward any evidence showing that the effluent limits set forth in the Permit would cause harm to the Petitioners. Specifically, neither Petitioners, nor their proffered expert, have any evidence on the specific conditions in the Permit,

⁵ Copies of the deposition transcripts are attached as Exhibit 1 (Marge West), Exhibit 2 (Bill West), Exhibit 3 (Jill Morrison) and Exhibit 4 (Dr. Ginger Paige).

or that the EC and SAR limits in the permit are not protective. Paige Depo. at 22; Morrison Depo. at 27, lines 18-25.

10. Stephens discharges no water into the Spotted Horse Creek or any ephemeral tributary of Spotted Horse Creek. Logan Decl. at ¶ 8 (Exhibit 5). Although the Permit allows for discharges with use of the assimilative capacity credits for the Powder River Basin, Stephens has never applied for or been granted authorization to discharge water into Spotted Horse Creek under this program. *Id.* at ¶ 11. Stephens' operations contain all discharge water in the three impoundments described in Permit No. WY0094056. *Id.* at ¶ 9.

11. The three impoundments described in Permit No. WY0094056 have never overtopped or leaked, and water has not breached the impoundments in any way. Logan Decl. at ¶ 9.

12. Either Stephens or its contractors visually inspect the three impoundments on a consistent basis, but no less than once per week. *Id.* at ¶ 10. There has never been any visual evidence of leaks, seeps, overtopping, or any examples of the impoundments not containing all of the water that is discharged into them. *Id.*

13. The DEQ has not previously found Stephens to be in violation of Permit No. WY0094056. DEQ's Resp. to Disc. No. 6; Logan Decl. at ¶ 12. The DEQ has not sent Stephens a notice of violation regarding any aspect of Permit No. WY0094056. DEQ's Resp. to Disc. No. 6.

III. Legal Overview

A. Aggrieved or Adversely Affected Parties

Petitioners have filed their appeal pursuant to Wyo. Stat. Ann. § 35-11-112(a)(iv) and DEQ's General Rules of Practice & Procedure, Chapter 1, Section 16 recognizing the EQC's authority to conduct hearings related to protests of permits issued by the DEQ. As explained

below, there are however, limitations to those who have standing to file such an appeal or protest of a DEQ decision.

Wyoming DEQ Rules of Practice & Procedure, Chapter I, Section 3(a), incorporates the definitions and rules of the Wyoming Administrative Procedure Act (WAPA) in matters before the EQC. Under WAPA, “any person aggrieved or adversely affected in fact by a final decision of an agency...is entitled to judicial review in the district court for the county in which the administrative action or inaction was taken.” Wyo. Stat. Ann. § 16-3-114(a) (emphasis added).

An “aggrieved party” is also defined by the Environmental Quality Act (EQA) as:

any person named or admitted as a party or properly seeking or entitled as of right to be admitted as a party to any proceeding under this act because of *damages that person may sustain* or be claiming because of his unique position in any proceeding held under this act;

Wyo. Stat. Ann. § 35-11-103(vii) (emphasis added). Thus, to substantiate a claim before the EQC, Petitioners must establish that they are aggrieved or adversely affected in fact by the decision being challenged. *See* Wyo. Stat. Ann. § 16-3-114(a).

The Wyoming Supreme Court has found that “[a]n aggrieved or adversely affected person is one who has a legally recognizable interest in that which will be affected by the action.” *Northfork Citizens For Responsible Development v. Park Co. Board of Comm’rs*, 2008 WY 88, ¶ 9, 189 P.3d 260, 262 (Wyo. 2008) (citing *Roe v. Board of County Comm’rs, Campbell County*, 997 P.2d 1021, 1023 (Wyo. 2003)). While the statute recognizes the possibility of future harm resulting from agency action, those harms must not be purely speculative. *Id.* The harm alleged must be “a perceptible, rather than a speculative, harm resulting from the agency action.” *Id.* The interest affected must be “substantial, immediate, and pecuniary. A future, contingent, or merely speculative interest is ordinarily not sufficient.” *Id.* (emphasis added).

Accordingly, to bring a valid claim before the EQC, Petitioners must establish “in fact” that they are an adversely affected party with a substantial, immediate and non-speculative harm. *Id.*

B. Affirmative Relief Under DEQ's Rules of Practice

In the DEQ’s General Rules of Practice and Procedure, a “Protestant” is defined as: “Any person desiring to protest the application of a permit or any person requesting a hearing before the EQC in accordance with the Environmental Quality Act and who is objecting to an action of the Department of Environmental Quality and desiring affirmative relief.” Chapter 1, Section 2(a)(ii) (emphasis added). In other words, Petitioners must present evidence that they have been harmed to the EQC that upon a favorable decision, would give Petitioners relief from those specifically pled allegations. Because the harms alleged by Petitioners are factually non-existent, the EQC can provide Petitioners no affirmative relief.

MOTION TO DISMISS

Pursuant to Rule 12(b)(6) of the Wyoming Rules of Civil Procedure, the EQC should dismiss the Petition because Petitioners have failed to state a claim upon which the EQC could grant relief.⁶ The EQC grants motions to dismiss when Petitioners fail to state a claim on which relief can be granted based. *See Feltner v. Casey Family Programs*, 902 P.2d 206, 206 (Wyo. 1997). An appeal will be dismissed when, based on the pleadings, the Petitioners present no set of allegations to provide a valid claim. *Cramer v. Powder River Coal, LLC*, 2009 WY 45, ¶ 37, 204 P.3d 974, 983-84 (Wyo. 2009) (affirming District Court's grant of a motion to dismiss because plaintiff did not offer evidence establishing defendant's duty, standard of care, or breach of contractual obligations); *see also Garnett v. Brock*, 2 P.2d 558, 562 (Wyo. 2000).

⁶ *See* footnote 1, *supra*.

I. Argument

A. The Petition States No Claim Upon Which Relief Could Be Granted

The Petitioners' Appeal is based upon claims which are without any factual basis and completely unsupported; this appeal should be dismissed for failure to state a claim upon which relief can be granted. Petitioners' claim that water discharged into Spotted Horse Creek will not maintain the water quality for agricultural purposes and will cause a significant decrease in crop production, thus the Water Quality Rules and Regulations, Chapter 1, Sec. 20. Petition at ¶ 3(p). Thus, Petitioners allege that DEQ's issuance of the Permit is arbitrary, capricious and an abuse of discretion. As explained below, the Petition should be dismissed because upon review of the Petition, it contains no claim upon which relief could be granted.

Based on the face of the Petition, Petitioners have asserted no facts that would entitle them to relief. First, the Petitioners allege that "[t]he Permit authorizes discharge into Spotted Horse Creek..." Petition at ¶ 3(f). The Permit plainly states: "The produced water will be discharged to three on-channel reservoirs...located in ephemeral tributaries to Spotted Horse Creek..." Permit at 1. The permit does not authorize discharges into Spotted Horse Creek; rather, the Permit authorizes discharges into three reservoirs which are located on tributaries to Spotted Horse Creek.⁷ Furthermore, the Permit specifically states: "The permittee is required to contain all effluent from the outfalls in the on-channel reservoir(s) at this facility..." Permit at 1. It is clear from the conditions found in the Permit that discharges into Spotted Horse Creek are not authorized, and the Petitioners' claim is totally unfounded and should be dismissed. *See Gillis v. F & A Enters*, 934 P.2d 1253 (Wyo. 1997) (motions to dismiss will be granted when complainant cannot assert any facts that would entitle him to relief). Petitioners clearly have a

⁷ Although the Permit allows for discharges under assimilative capacity credits, Stephens has never applied for or been granted authorization to discharge water into Spotted Horse Creek under this process. Logan Decl. at ¶ 11.

basic misunderstanding of the facts in this case, or have elected to use “stock pleadings” applicable to on-channel discharge permits.

Second, the Petitioners allege: “No background SAR has been determined, and the Permit establishes no effluent limit for SAR.” Petition at ¶ 3(k). This claim is without proof, as the Permit clearly provides a formula for establishing the SAR limit: $SAR < 6.67 \times EC - 3.33$. Permit at 3. Clearly the Permit does establish SAR limits and the Petitioners’ bare allegations are not facts to show otherwise. *See* Section II Statement of Facts, *supra*. Without facts, the Petition must be dismissed.

B. The Petitioners’ Challenge to the Tier 2 Methodology is Not Applicable to this Case.

The Petitioners also claim that the Tier 2 methodology used to determine the effluent limitations for the Permit is scientifically invalid and violates Wyoming Statute and the Water Quality Rules and Regulations.⁸ Petition at ¶¶ 3(n-s). However, the expert opinion upon which Petitioners rely is concerned with the methodology used by DEQ to determine the appropriate effluent limits for direct discharge *into* ephemeral drainages. Hendrickx and Buchanan Report.⁹ However, the Permit does not allow for effluent discharge into an ephemeral drainage. Permit at 1; *see also* DEQ’s Response to Discovery No. 6. (DEQ never authorized or found any intentional discharge). The Permit only authorizes discharge into fully contained impoundments. Permit at 1. Those are not the conditions the Hendrickx and Buchanan Report examined and that Report does not create an injury in fact in this appeal. As to their specific challenge to Stephens’ Permit,

⁸ Petitioners’ Appeal relies on an expert opinion which is not applicable in this case. Jill Morrison, PRBRC’s proffered expert, when asked why PRBRC is opposed to the issuance of the Permit, responded that “the permit utilized a scientific methodology referred to as Tier 2 by DEQ, which has been determined to be scientifically invalid by several experts.” Morrison Depo. at 10, lines 9-12. Further, when asked if “that’s the only reason you are opposed to this permit?,” she responded, “That’s right.” *Id.* at line 15.

⁹ The Petitioners only connection of the Hendrickx and Buchanan Report to the Permit at issue is based on the assumption that the reservoirs will overflow and release effluent into the ephemeral drainage.

they have set forth no facts that that would entitle them to relief. Therefore, Petitioners appeal must be dismissed.

MOTION FOR SUMMARY JUDGMENT

In the event that the EQC does not dismiss the Petition in total, Stephens hereby moves for summary judgment against Petitioners on all issues pursuant to Chapter II, Section 14 of the DEQ General Rules of Practice & Procedure, and Rule 56(b) of the Wyoming Rules of Civil Procedure.

I. Standard for Summary Judgment

Chapter II, Section 14 of the DEQ General Rules of Practice & Procedure makes applicable the Wyoming Rules of Civil Procedure in matters before the EQC. The summary judgment standards provided by Wyoming Rules of Civil Procedure Rule 56 are therefore applicable in this appeal. *See Rollins v. Wyoming Tribune Eagle*, 2007 WY 28, ¶ 6, 152 P.3d 367, 369 (Wyo. 2007). Under Wyoming Rules of Civil Procedure Rule. 56(b), a party is entitled to summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Neal v. Caballo Rojo, Inc.*, 899 P.2d 56, 58-59 (Wyo. 1995); *see Connely v. McColloch (In re Estate of Drwenski)*, 2004 WY 5, ¶ 42, 83 P.3d 457, 468 (Wyo. 2004) (summary judgment is proper when plaintiffs had no loss or harm); *see also Ahrenholtz v. Laramie Econ Dev. Corp.*, 2003 WY 149, ¶ 25, 79 P.3d 511, 517 (Wyo. 2003) (summary judgment appropriate when there is no evidence to support claims).

II. Argument

The EQC hears appeals from citizens who may be aggrieved or are adversely affected in fact by decisions of the DEQ; it not a place for public interest groups who are generally opposed to CBM development in Wyoming to file limitless appeals. Petitioners provide no evidence of any kind to substantiate that this Permit: (1) is not protective of agricultural uses, (2) will cause a

decrease in crop production, or (3) will harm them in any way. Petitioners admit that they have no evidence of harm from DEQ's issuance of this Permit or that this Permit's effluent limits are not protective of agricultural uses. Thus, Petitioners are in fact not "aggrieved" or "adversely affected" under WAPA and Wyo. Stat. Ann. § 35-11-103(vii).

A. *The Petitioners are not an "aggrieved party" or "adversely affected" under Wyo. Stat. Ann. § 16-3-114(a)*

Respondents should be granted summary judgment in this appeal because there is no genuine issue of material fact as to whether the Petitioners are in fact an "aggrieved party" pursuant to Wyo. Stat. Ann. §16-3-114(a). As discussed above, the harm alleged by the Petitioners must be "a perceptible, rather than a speculative, harm resulting from the agency action." *Northfolk Citizens*, 2008 WY 88, ¶ 9, 189 P.3d at 262. The interest affected by the agency action must be "substantial, immediate, and pecuniary." *Id.* Petitioners can not sustain the position that the issuance of the permit has or will result in any harm such that they should be considered an "aggrieved party." Further, Petitioners fail to present any factual evidence that the DEQ's issuance of the Permit has harmed them in any way. In each of the Petitioners' Depositions, Jill Morrison for PRBRC and Bill West and Marge West for William F. Ranch, LLC, each admits that he or she has no evidence of any damages related to the issuance of this Permit.

The harm alleged by Petitioners from DEQ's issuance of the Permit is purely speculative. Petitioners allege that "water discharged under the permit *could* enter and cross the lands of the Wests." Petition at ¶ 3(g) (emphasis added). Petitioners also allege that "[t]he Permit authorizes discharges that will not maintain the water supply at a quality which allows continued use of the water for agricultural purposes without a measurable decrease in crop production in violation of Water Quality Rules and Regulations, Chapter 1, Sec. 20." Petition at ¶ 3(p). Petitioners also

allege that the “[l]imitations on the effluent constituents EC and Sodium Adsorption Ratio (SAR) have the *reasonable potential* to adversely impact the agricultural use of the receiving water.” Petition at ¶ 3(q) (emphasis added). Petitioners can not support any of these allegations with facts.

In short, Petitioners can only alleged a potential and speculative harm and can not provide any support for their alleged damages. Petitioners have not put forth any evidence to suggest that the effluent limitations set in the Permit will cause a measurable decrease in crop production. Petitioners admit that they have no evidence that the effluent contained in the three impoundments has escaped or is discharged into Spotted Horse Creek or one of its tributaries.¹⁰

In responding to Stephens’ questions, the Petitioners answered:

Question: That’s fine. As to these three impoundments, do you have any evidence that these three specific impoundments have ever leaked?

Answer: No, I don’t. But if they have never leaked, they will be the first in the history of Wyoming.

Question: But you have no evidence that these three have –

Answer: No.

M. West Depo. at 29, lines 13-21. Jill Morrison concurred:

Question: Do you have any specific information about these reservoirs in particular, that they leak?

Answer: No.

Morrison Depo. at 14, lines 1-4. Petitioners’ discovery responses are consistent with these statements:

8. WYPDES Permit No. WY0094056 does not authorize any intentional discharge of water into any ephemeral tributary of Spotted Horse Creek or Spotted Horse Creek.

Petitioners’ Response: Admit

¹⁰ The Permit does not even allow effluent discharge into an ephemeral drainage. The Permit authorizes discharge into three containment reservoirs. Permit at 1. The Permit specifically states: “The permittee is required to contain all effluent from the outfalls in the on-channel reservoir(s).” Permit at 1. Contrary to their allegations in their Petition ¶ 3(f), Petitioners admit that the Permit does not authorize intentional discharges into Spotted Horse Creek or one of its tributaries. Petitioners’ Responses to Stephens First Combined Discovery Requests, No. 8.

17. **Petitioners Response:** Petitioners admit they have no evidence that water from Stephens' impoundments has escaped or otherwise left the impoundment so as to reach a tributary of Spotted Horse Creek or so as to reach Spotted Horse Creek.

Petitioners' Responses to Stephens First Combined Discovery Requests, Nos. 8 & 17 (Exhibit 6).

In contrast, the Declaration of Terry Logan, Stephens' Vice President of Engineering & Production, confirms that the three impoundments at issue have, to Stephens' knowledge, never leaked, overtopped or had water escape. Logan Decl. at ¶ 9. Stephens has contained all effluent in the three impoundments; Petitioners have no evidence to the contrary. *Id.* Likewise, Petitioners have no evidence that any water has either infiltrated into the groundwater and or harmed Petitioners crop production. In discussing whether Petitioners had evidence of the impoundments leaking or if water infiltrated into the soils beneath the impoundments, Jill Morrison stated:

Question: Do you have any specific information about these reservoirs in particular, that they leak?

Answer: No

Morrison Depo. at 14, lines 1-4.

Question: That's not exactly what I was after. Do you have any evidence that that specific impoundment has leaked or seeped?

Answer: No.

Question: Do you have any evidence that any of the three impoundments at issue in this appeal have leaked or seeped?

Answer: Not specifically, no.

Question: So you cannot contribute any loss of crop production to these three specific impoundments.

Answer: Not specifically, no.

B. West Deposition at 32, lines 10-17; 37 at lines 12-15.

In sum, Petitioners have no evidence that any water from the three impoundments has escaped and crossed their land. Thus, they can prove no facts that issuance of the Permit will not

maintain the water quality or continued uses for agricultural purposes. Petitioners can not establish that they are adversely affected by the Permit. PRBRC is not free to challenge every WYPDES permit in Wyoming because it alleges an interest in CBM development. Petitioners must establish that they are specifically harmed by the issuance of the Permit. Here, Petitioners can not establish a genuine issue of material fact that they are adversely affected by the issuance of the Permit and summary judgment should be granted to the Respondents.

B. No “affirmative relief” is available to the Petitioners.

Petitioners request that the EQC reverse the DEQ’s decision to issue the Permit because its issuance was arbitrary, capricious and an abuse of discretion. Petition at ¶¶ 3(s) & 4. The EQC’s reversal of the decision issuing the Permit will provide no relief to Petitioners as the activity conducted pursuant to the Permit has harmed and is not harming Petitioners. Stephens’ Motion for Summary Judgment should be granted pursuant to Wyoming Rules of Civil Procedure Rule 56(b) because there is no genuine issue of material fact as to whether there is any “affirmative relief” available to Petitioners.

As described above, the DEQ’s General Rules of Practice & Procedure provide that a “Protestant” is:

Any person desiring to protest the application of a permit or any person requesting a hearing before the Environmental Quality Council in accordance with the Environmental Quality Act and who is objecting to an action of the Department of Environmental Quality and *desiring affirmative relief*.

Chapter 1, Section 2(a)(ii) (emphasis added). The only harm Petitioners allege in their Appeal is purely speculative. Petitioners admit that they have no evidence that water from the impoundments has reached their property, nor has the activity conducted pursuant to the Permit caused any damage to their property or caused a decrease in agricultural production. Bill West stated:

Question: So you cannot contribute any loss of crop production to these three specific impoundments.

Answer: Not specifically, no.

B. West Depo. at 37, lines 12-15. Marge West concurred:

Question: Do you have any evidence that it's the water from these three impoundments that has caused the decrease in crop production?

Answer: Well, since the water from other impoundments are causing the decrease in crop production, I think its reasonable to assume that the water from these here impoundments also are contributing to the problem.

Question: I apologize, ma'am. I'm not asking you to make an assumption. I'm asking if you have any specific evidence of –

Answer: No.

M. West Depo. at 36, lines 2-13. In their discovery responses, Petitioners again admit that water from Stephens' impoundments has not decreased agricultural production.

19. Petitioners have no evidence that CBM water discharged specifically from Stephens's impoundments has decreased their agricultural production.

Petitioners Response: Admit

Petitioners' Responses to Stephens First Combined Discovery Requests, No. 19 (Exhibit 6).

Accordingly, because Petitioners cannot contribute any loss of crop production to Stephens, any decision by the EQC will leave the Petitioners in the same position they were prior to the filing of their Petition: that is to say unharmed. There is no "affirmative relief" available to Petitioners in this case, and there is no genuine issue of material fact which might prove otherwise. Accordingly, summary judgment should be granted to the Stephens, and the Petition denied.

C. The Petitioners' Challenge to the Tier 2 Methodology is Not Applicable in this Case.

The Petition alleges that "[a]t the time the Permit was issued, the Wyoming Department of Environmental Quality (WDEQ) had knowledge that the use of soil salinity data to derive effluent limitations for EC and SAR was not based on sound science." Petition at ¶ 3(1). Petitioners also allege that "[t]he numeric limitations for EC and SAR in the Permit are not

derived from appropriate scientific methods in violation of Water Quality Rules and Regulations, Chapter 2, Section 5(c)(iii)(C)(IV).” Petition at ¶ 3(q). However, as explained above, the Hendrickx and Buchanan Report on which Petitioners rely relates only to effluent discharges into ephemeral drainages, not into full containment reservoirs.

In fact, Petitioners do not object to the EC and SAR limits in the Permit and have no evidence that limits in the Permit are not protective. Jill Morrison, a community organizer with PRBRC, stated in her deposition:

Answer: [T]he point is they have used a scientifically invalid methodology to set permit limits, that Hendrickx and Buchanan have stated in their reports is not protective and is going to lead to measurable decrease in crop production.

Question: I understand. Like we discussed earlier, it’s not the limits that you are objecting to, it’s how they were proposed?

Answer: And that they are not protected.

Question: How do we know they are not protected?

Answer: Because Hendricks and Buchanan say so.

Morrison Depo. at 25, lines 1-11.

The Petition does not allege that the effluent limits in the Permit are not protective of Petitioners agricultural uses. The Petitioners have no evidence that the specific effluent limits set in the Permit will violate the applicable requirements of Wyo. Stat. Ann. § 35-11-302 and the Water Quality Rules and Regulations, Chapter 2, Sec. 9(a)(vi). In fact the Petitioners proffered expert stated that the EC and SAR limits would be irrelevant if the discharges were fully contained in the impoundments.

Question: Okay. Would the limit matter if all the water was contained in the impoundment?

Answer: No. If you could prove that all the water was to be contained, no, it wouldn’t matter.

Paige Depo. at 22 (line 25) – 23 (line 3). When asked if the effluent limit established by the Permit was too high, the Petitioners’ own expert said, “I’m not at liberty to actually respond

directly to the limit. I'm talking about the process of determining the limit." Paige Depo. at 22. Petitioners have put forward no evidence that the effluent limits established by the Permit do not protect the Petitioners' property.

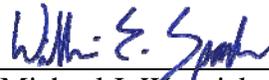
Petitioners have no evidence that the Tier 2 method is inappropriate or that its application here has caused any harm or damages. The Petitioners allege unsupported assumptions regarding the Stephens impoundments, an "irrelevant" expert opinion and a general dissatisfaction with CBM water management. *See Morrison Depo.* at 13-14. The Petition presents no genuine issue of material fact that discharges authorized under the Permit cause any loss in agricultural production or any other harm to Petitioners. Therefore, summary judgment should be granted to the Respondents.

CONCLUSION

The Petitioners' Appeal is based on assumptions and speculation. There is no evidence that the effluent contained in the three impoundments, as authorized by the Permit, has escaped. Should effluent escape from the impoundments, there is no evidence that the effluent limits set forth in the Permit are in violation of the applicable requirements. The Petitioners' Appeal is based entirely upon an irrelevant scientific opinion which disagrees with the approved methodology used by DEQ to establish effluent limits. Petitioners have not shown themselves to be in fact "aggrieved" or "adversely affected" for the purposes of Wyo. Stat. Ann. §16-3-114(a) and § 35-11-103(a)(vii), and the EQC should grant Stephens' Motion to Dismiss. In addition, because this appeal rests entirely on speculation and unfounded assumptions, there is no issue of material fact raised by Petitioners and Stephens is entitled to judgment as a matter of law.

Dated this 9th day of February, 2010.

Respectfully submitted,



Michael J. Wozniak

William E. Sparks

Drake Hill

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Attorneys for Stephens Energy Company, LLC

CERTIFICATE OF SERVICE

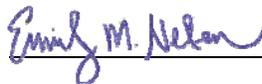
I hereby certify that on this 9th day of February, 2010, I sent a copy of the foregoing via electronic mail and overnight mail to:

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Emily Nelson

Index of Exhibits

- Exhibit 1 Deposition Transcript of Marge West
- Exhibit 2 Deposition Transcript of Bill West
- Exhibit 3 Deposition Transcript of Jill Morrison
- Exhibit 4 Deposition Transcript of Ginger Paige
- Exhibit 5 Declaration of Terry Logan
- Exhibit 6 Excerpts from Petitioners' Responses to Stephens Energy Company, LLC's First
Combined Discovery Requests

Exhibit 1

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING
Docket Number: 09-3807

IN THE MATTER OF THE)
APPEAL OF POWDER RIVER)
BASIN RESOURCE COUNCIL,)
AND WILLIAM F. WEST)
RANCH, LLC, FROM WYPDES)
PERMIT NO. WY0094056)

DEPOSITION OF MARGE WEST

Taken on behalf of the Wyoming DEQ

2:10 p.m., Wednesday
January 13th, 2010

PURSUANT TO AGREEMENT, the Deposition of
MARGE WEST was taken in accordance with the
applicable Rules of Civil Procedure in the Offices
of Davis & Cannon, 40 North Main Street, Sheridan,
Wyoming, before Carol A. O'Bryan, Certified Court
Reporter, and a Notary Public in and for the State
of Wyoming.

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EXHIBIT INDEX

MARKED FOR
IDENTIFICATION

Page

Deposition Exhibit5
Notice of Deposition of
Marge West

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A P P E A R A N C E S

For the Wests: DAVIS & CANNON, LLP
Attorneys at Law
40 North Main Street
Sheridan, WY 82801
By: Alison Ochs, Esq.
For the DEQ: WYOMING AG'S OFFICE
Attorneys at Law
123 Capitol Building
Cheyenne, WY 82002
By: Luke Esch, Esq.
For Stephens Energy BEATTY & WOZNIAK, PC
Company: 216 Sixteenth Street
Suite 1100
Denver, CO 80202-5115
By: William Sparks, Esq.
Drake Hill, Esq.
(Appearing via telephone)

ALSO PRESENT: Jill Morrison
Bill West

I N D E X

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DEPOSITION OF MARGE WEST:
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P R O C E E D I N G S

MARGE WEST,

having been first duly sworn to tell the
truth, testified as follows:

EXAMINATION

QUESTIONS BY MR. ESCH:
Q Mrs. West, my name is Luke Esch. I'm
with the Department of Environmental Quality, and
I'm going to be doing the deposition today.
A Okay.
Q If you have any questions about the
questions I ask you or if you are not clear,
please ask me; and I'll repeat them or rephrase
them, and we'll get it cleared up.
I'll try not to be too duplicative of
what we've already gone through today; but before
we get started with you, please state your name
for the record.
A Margery West.

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1 (Whereupon the document referred to by
2 counsel was marked for identification as
3 Deposition Exhibit 8, after which the proceedings
4 continued as follows:)

5
6 **Q** (By Mr. Esch) And, Mrs. West, I've
7 handed you this document. It's the Notice of
8 Deposition. You have seen that before?

9 **A Yes.**

10 **Q** And basically that just asks you to
11 bring any materials that you may need to answer
12 certain interrogatories --

13 **A Yes.**

14 **Q** -- that you gave on our discovery
15 requests.

16 **A Yes.**

17 **Q** And you did that?

18 **A Yes.**

19 **Q** Okay. Well, we'll just dive right in.
20 And what -- what do you not like about
21 the permit that was issued in this circumstance?

22 **A I don't like that there is no water
23 quality standards. I don't like that it is not
24 completely contained in the reservoirs; and by
25 that I mean it does not leak out, overflow during**

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1 **It has very high total dissolved solids. It has
2 very high SARs.
3 When it -- in the past when it has come
4 down Spotted Horse Creek, the channel has frozen
5 -- well, they don't stop the water just because
6 the channel is frozen. The water keeps coming
7 down. It floods our land. It has destroyed
8 approximately 100 acres of prime hay meadow which
9 was native grasses and alfalfa combined. It
10 killed over 200 old-stand cottonwood trees; and
11 everybody says, too bad.**

12 **Q** Now, which permits are you referring to
13 that discharged all of this water?

14 **A I am referring to this permit, which is
15 in question. I am referring to the Devon permit,
16 and I am referring to all of the permits on the
17 lands up above us. We are at the bottom of the
18 drainage and, therefore, water from numerous
19 companies ends up on our land.**

20 **Q** So you said that this permit -- you are
21 aware that water from this permit has impacted
22 your land?

23 **A I'm sure it has. Numerous times when I
24 go to Gillette there is a tributary of Spotted
25 Horse Creek that crosses the highway in a culvert.**

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1 **a storm or by any other means get into the
2 ephemeral channel.
3 Q** Anything else?
4 **A Well, I don't like the fact that it gets
5 onto our land and adds to the water problems we
6 have had.**

7 **Q** Gets onto your land. Okay. And let's
8 discuss this no water quality standards. Are you
9 familiar with the terms of a permit?

10 **A I have read it.**

11 **Q** You have read it?

12 **A (Witness nods head.)**

13 **Q** And there are water quality effluent
14 limits in the permit, correct?

15 **A Yes, there are. However, no effluent
16 limits have ever been reached on our land.**

17 **Q** Can you explain that?

18 **A The ICP points, the water that flowed
19 down Spotted Horse Creek never reached the limits
20 that were stated. It's -- you know, in some areas
21 of Wyoming this methane water, the discharge water
22 is good water. And people can irrigate with it;
23 they can grow things with it.**

24 **However, where we're located in the
25 northeastern part of Wyoming it is not good water.**

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1 **And during the winter, not this year -- this year
2 I think the wells are shut off -- but in previous
3 years the water flows through this culvert, and
4 you can see it right from the highway.
5 I mean, it's no big secret. And it goes
6 into the Spotted Horse Creek drainage. We are at
7 the bottom of the Spotted Horse drainage, and it
8 impacts our lands.**

9 Bill has spent untold hours trying to
10 mitigate the damages caused by methane water. He
11 has not had any help from anyone. He has hauled
12 more than 500 truckloads of sediment that was
13 washed into an old reservoir years ago -- it had
14 nothing to do with methane -- onto this land and
15 has leveled it out, trying to get the land back
16 where it would grow something.

17 From 2000 to 2004 this land didn't grow
18 anything. And these truckloads that he hauls are
19 not dump-truck loads. They are not cattle-truck
20 loads. They are semi-belly-dump trailer loads.

21 That's a lot of work. And here he's
22 trying to solve a problem that he did not cause.

23 **Q** I understand. Now, let's go back to
24 this culvert that you were discussing. Where is
25 this culvert in relation to these three

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1 reservoirs?
 2 You are referring to exhibit --
 3 MS. OCHS: Exhibit 4.
 4 **Q** (By Mr. Esch) Exhibit 4?
 5 **A** **Okay. It is -- I believe this is the**
 6 **highway (indicating), and it crosses right here**
 7 **and goes into Spotted Horse Creek.**
 8 **Q** Okay. And you are referring to section
 9 -- it looks like the stamp is covered up on that,
 10 but it's between sections -- I can't even read
 11 that.
 12 **A** **Well, I couldn't either. It's**
 13 **indecipherable. But, anyway, that's where it is;**
 14 **and, you know, we've seen the water there. It**
 15 **doesn't go uphill. That's for sure. It goes**
 16 **downhill.**
 17 **Q** Have you seen these three reservoirs
 18 overflow?
 19 **A** **I have not been up to the reservoirs.**
 20 **Q** So you have not personally seen them
 21 overflow?
 22 **A** **No, I have not personally scene them**
 23 **overflow --**
 24 **Q** Have you -- sorry.
 25 **A** **--h, I don't believe there is a**
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1 **reservoir in the State of Wyoming that hasn't**
 2 **overflowed during storms or by being -- having a**
 3 **constant supply of water dumped into it.**
 4 **Q** Okay.
 5 **A** **You know, unless the reservoir is lined**
 6 **and the volume of water strictly controlled, it is**
 7 **going to overflow and leak. I don't think there's**
 8 **a reservoir in Wyoming that doesn't leak.**
 9 **Q** Okay. Let's talk about the limits of
 10 the permit for a minute.
 11 **A** **All right.**
 12 **Q** Do you believe that the permit limits
 13 are protective of irrigated agriculture?
 14 **A** **No, and I will tell you why.**
 15 **Q** Please do.
 16 **A** **Because the property on Spotted Horse**
 17 **Creek that is above us and below us, both had**
 18 **higher readings than our land did. And so these**
 19 **were all added together and then averaged out.**
 20 **We got a par higher average than we**
 21 **originally had, and I don't think that's right.**
 22 **Q** Can you be a little more specific on
 23 average that -- soil EC, water EC?
 24 **A** **Right. Right.**
 25 **Q** Well, which one?
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1 **A** **The soil EC.**
 2 **Q** Okay. So you're concerned about the
 3 discharges' impact on your property?
 4 **A** **Exactly.**
 5 **Q** Okay. And despite the containment
 6 requirement, you don't believe that the reservoirs
 7 will be contained?
 8 **A** **I do not. You know, many of these**
 9 **reservoirs -- and I don't know about these,**
 10 **because I have not been up to them. However, many**
 11 **of the reservoirs are deliberately located above**
 12 **seams of shale or coal.**
 13 **Well, you know what's going to happen to**
 14 **the water. It leaks out of the reservoir. It**
 15 **goes downhill and ends up on my land.**
 16 **Q** Where do you get this information about
 17 deliberately locating reservoirs on top of coal?
 18 **A** **I have been with some of these -- I**
 19 **don't believe you call them landmen -- I'm not**
 20 **sure what their title is -- when they come out and**
 21 **stake the reservoirs.**
 22 **Q** And they tell you that they are looking
 23 for coal seams?
 24 **A** **Well, they always put them above shale**
 25 **seams; and coal seams do the same thing that shale**
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1 **seams do.**
 2 **Q** Okay. Do you know who these individuals
 3 were?
 4 **A** **I don't know their names. I can tell**
 5 **you what company they were.**
 6 **Q** Okay. Please do.
 7 **A** **They were Yates.**
 8 **Q** All right. But with regard to these
 9 three reservoirs, you really don't have any
 10 information that would lead you to believe that
 11 they were purposely located on top of
 12 reservoirs -- or of shale seams? I'm sorry.
 13 **A** **No, actually I do not. However, I do**
 14 **know that they leak into Spotted Horse Creek.**
 15 **Q** And how do you know that?
 16 **A** **I've seen it.**
 17 **Q** You've seen these three reservoirs leak
 18 into Spotted Horse Creek?
 19 MS. OCHS: It's okay. Take your time.
 20 **A** **I have seen water crossing the highway**
 21 **and going into a tributary that flows into the**
 22 **Spotted Horse Creek from the direction of these**
 23 **reservoirs.**
 24 **Now, it's not up to me to prove that**
 25 **they don't leak. It's up to the state officials**
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1 **to prove to me that they don't leak.**
 2 **Q** (By Mr. Esch) And have you contacted
 3 DEQ about your concern that these reservoirs
 4 leak?
 5 **A We have contacted the DEQ many times.**
 6 **Q** Have they inspected these three
 7 reservoirs, to your knowledge?
 8 **A Not about these three reservoirs. About**
 9 **other reservoirs. They have come out several**
 10 **times.**
 11 **Q** What other reservoirs?
 12 **A Oh, goodness. I don't know the names of**
 13 **them. One was on Odegard's, to the right of SA**
 14 **Road as you head in on SA. And they -- I don't**
 15 **know what the name of the reservoir was. They did**
 16 **make them shut that reservoir off, stop putting**
 17 **water into it.**
 18 **Q** So they addressed the situation?
 19 **A At times, yes.**
 20 **Q** At times?
 21 **A However, we have contacted them many**
 22 **times when they did not come out. You know, they**
 23 **only have a limited number of personnel; and, you**
 24 **know, one man can't be in 14 different places at**
 25 **the same time.**

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1 **build it someplace that will reasonably well**
 2 **contain the water.**
 3 **And for a rancher this is rain water,**
 4 **snow melt, storm events. It is not this methane**
 5 **water that is going to cause so much damage.**
 6 **You know, before the methane started, we**
 7 **grew hay. Our trees were beautiful stands of**
 8 **old-age cottonwood trees. They provided shelter**
 9 **for our cows. They provided shelter for**
 10 **livestock, for wildlife.**
 11 **You know, it's -- and Wyoming doesn't**
 12 **have an overabundance of trees, anyway. No, we**
 13 **don't.**
 14 **Q** I understand. But if the terms of this
 15 permit were complied with, and there was
 16 containment --
 17 **A If there is total containment, I would**
 18 **be fine with it.**
 19 **Q** Okay.
 20 **A And total containment is like this**
 21 **glass. This is totally containing the water in**
 22 **it.**
 23 **Q** Okay. This permit does have a provision
 24 in there that allows it to overtop during storm
 25 events.

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1 **Q** So they have not inspected these
 2 reservoirs that you've --
 3 **A I don't know. I don't know if they have**
 4 **inspected these three reservoirs.**
 5 **Q** So if these reservoirs were leaking and
 6 DEQ -- let me rephrase that.
 7 Should a reservoir leak, isn't that an
 8 action for the state to fix through an enforcement
 9 action?
 10 **A I think that more studies need to be**
 11 **done when the application is first submitted to**
 12 **build a reservoir wherever. It needs to be**
 13 **discovered whether or not they are on top of a**
 14 **coal seam or a shale seam.**
 15 **And if they are, that would be fine if**
 16 **they were lined so that they would not leak. Very**
 17 **few of these reservoirs are lined, very few.**
 18 **Q** So that should be addressed before the
 19 permit is issued --
 20 **A Exactly.**
 21 **Q** -- in your opinion?
 22 **A To know whether it is -- you know, when**
 23 **you are building a reservoir, at least to a**
 24 **rancher, you don't want to build it someplace that**
 25 **you know is going to constantly leak. You want to**

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1 **A And I'm not a bit surprised by that.**
 2 **Q** Okay. And you do not agree with that?
 3 **A No.**
 4 **Q** Okay. So let's say that this permit --
 5 or it's a hypothetical here. Let's say it is like
 6 the glass.
 7 **A Uh-huh.**
 8 **Q** Would you have --
 9 **A I would have no problem.**
 10 **Q** Well, let me ask the question first.
 11 Would you have a problem with if the EC was 4,000
 12 and SAR was 30?
 13 **A Absolutely.**
 14 **Q** If it was full containment?
 15 **A Not if it were not allowed to overtop**
 16 **during a storm event. You know, they are going to**
 17 **store this water someplace, obviously.**
 18 **However, in my opinion, the smart thing**
 19 **to do with this water is to reinject it or treat**
 20 **it or use one of these systems which they have now**
 21 **developed where the water never touches the land.**
 22 **It comes up into a pipe and is separated from the**
 23 **gas and goes right immediately back down into**
 24 **the --**
 25 **Q** Coal seam?

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17

1 **A -- coal seam without ever touching the**
 2 **surface.**
 3 **Q** Let's change the situation. What if the
 4 limits were an EC of 750 and SAR of five?
 5 **A But they are not.**
 6 **Q** This is a hypothetical. Let's just go
 7 there and say --
 8 **A Okay.**
 9 **Q** -- in a different part of the state,
 10 perhaps.
 11 **A Okay. So is this --**
 12 MS. OCHS: I'm just going to continue my
 13 objection to hypotheticals as to relevance.
 14 But please continue.
 15 **A Okay. Would you restate the question.**
 16 **Q** (By Mr. Esch) Yes. Same containment
 17 requirements, allows overtopping during storm
 18 events, but the limits are 750 for EC and SAR of
 19 five.
 20 **A Okay. Are these limits checked at the**
 21 **reservoir or the end of the over-pump-flow pipe at**
 22 **the reservoir, or are they checked where they get**
 23 **down and reach my land?**
 24 **Q** These are in the pipe like all --
 25 **A No.**

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18

1 **Q** So it still wouldn't approve?
 2 **A No.**
 3 **Q** Okay. Now, also on your -- in
 4 Interrogatory Number 1 in our -- I should say
 5 Petitioners' Response to DEQ's First Discovery
 6 Request, I think it is going to be on page --
 7 **A Two.**
 8 **Q** Well -- it might be Page 2. Let me pull
 9 that back out, actually.
 10 **A Right here (indicating).**
 11 MS. OCHS: Interrogatories start on
 12 Page 2.
 13 **Q** (By Mr. Esch) Page 2, Request for
 14 Admission Number 1. You comment that -- give me a
 15 minute here. Did you submit comments to the DEQ
 16 on this permit?
 17 **A You know, I have submitted a lot of**
 18 **different comments; and I honestly do not**
 19 **remember --**
 20 **Q** If you submitted on this one?
 21 **A -- whether I submitted on this one or**
 22 **not.**
 23 **Q** Okay. Well, I would purport to you that
 24 you did not submit comments.
 25 **A Okay.**

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19

1 **Q** Would you have any information that
 2 would be counter to that?
 3 **A I don't.**
 4 **Q** Okay. So why didn't you submit comments
 5 on this one?
 6 **A Well, after a while you get tired of**
 7 **submitting comments and nobody pays any attention**
 8 **to what you tell them --**
 9 **Q** So you thought it would --
 10 **A -- to be honest with you.**
 11 **Q** Okay. I appreciate your honesty.
 12 **A You know, we have been submitting**
 13 **comments for 10 years, now. It hasn't --**
 14 **Q** Have you been protesting every permit?
 15 **A Not every single one because, obviously,**
 16 **I didn't protest this one.**
 17 **But the ones that I have protested I**
 18 **cannot see that it did us any good.**
 19 **Q** Well, maybe I should have been a little
 20 more clear. You decided not to submit comments on
 21 a permit that you object to concerning the DEQ --
 22 **A I didn't decide not to. I just failed**
 23 **not to.**
 24 **Q** You failed not to. Okay.
 25 **A You know, it's pretty sad -- if I can**

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20

1 **make a comment on my own.**
 2 **Q** Sure.
 3 **A It's pretty sad when you have worked**
 4 **your whole life trying to improve your ranching**
 5 **operation, trying to improve the land, trying to**
 6 **do what you know is going to be good, and then the**
 7 **state government allows various companies to come**
 8 **in and do whatever they want, whenever they want**
 9 **and however they want; which to be honest with**
 10 **you, is the way it seems to me that things have**
 11 **been done.**
 12 **You know, nobody has stepped up and**
 13 **said, oh, gee whiz, we can't flood the Wests out**
 14 **like this, you know. We've got to put a stop to**
 15 **this. No. No. They say, well, too bad. It's**
 16 **all for the greater good.**
 17 **Q** I understand your concern.
 18 **A But if they destroy my ranch, it isn't**
 19 **for my greater good; and, yes, we do need the gas,**
 20 **and we do need oil. However, it needs to be done**
 21 **right. And it can be done right.**
 22 **Q** And how is the state to come up with
 23 those limits; how do they develop the ways to go
 24 about doing it right?
 25 **A Well, the problem is they haven't.**

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1 **Q** Is it a rule making --

2 **A I don't know.**

3 **Q** Does the state establish the limits

4 through rules?

5 **A They might. I don't know. However,**

6 **they say, okay, this water is supposed to have an**

7 **SAR of such and such and EQC of such and such.**

8 **However, the water that has flowed onto**

9 **our land and flooded it and destroyed hay meadows**

10 **has never one time reached those limits.**

11 **We have done water testing. Dave Engels**

12 **from Sheridan has come out and done water testing,**

13 **you know; and we send these tests in to the**

14 **laboratory.**

15 **We don't look at the water and say, oh,**

16 **gee whiz, this isn't right. It is scientifically**

17 **done, and the water has never once reached the**

18 **limits that it was supposed to.**

19 **Q** Well, do you know how DEQ sets the

20 limits in permits?

21 **A No, I don't.**

22 **Q** Are you aware of the CBM task force is

23 working on a process of addressing the issues of

24 CBM effluent limits?

25 **A Is this the group that's meeting in**
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1 MR. ESCH: Okay. Sure.

2 MR. HILL: Okay. We're ready.

3 **Q** (By Mr. Esch) When we left off, you

4 said you were on the CBM task force?

5 **A Correct.**

6 **Q** To your knowledge, what is the goal of

7 that task force?

8 **A The goal of that task force is to try to**

9 **find a solution to these water problems that many**

10 **people are having to -- you know, the first day,**

11 **the first -- well, no, I'm not supposed to talk**

12 **about that.**

13 But, anyway, it is to find a mutually

14 acceptable solution; a solution that is acceptable

15 to the CBM companies; a solution that is

16 acceptable to the landowners.

17 And in this meeting, you know, it's been

18 stated many times that there are scientists who

19 came out -- that came out twice. And the last

20 time they were out, they came out and looked at

21 our land.

22 And they have stated this Tier 2

23 methodology is flawed; and that is what all of

24 these permits have been issued under, is the

25 Tier 2. What we need to do is go back and find a
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1 **Gillette?**

2 **Q** I believe they did meet; was it on the

3 7th?

4 **A I am part of that group.**

5 **Q** You are part of that group, so you are

6 aware of the process that's coming forward --

7 **A Oh, yes.**

8 **Q** -- to address these issues?

9 **A Yes, I am.**

10 **Q** You know, I might need to take five

11 minutes. I'm pretty close to being done.

12 **A Okay.**

13 MR. ESCH: Is that okay with you guys?

14 MR. SPARKS: Yes, I'm good.

15

16 (Whereupon a break was taken, after

17 which the proceedings continued as follows:)

18

19 MR. ESCH: Okay. We're back. I think I

20 only have a few more questions left.

21 **Q** Whenever we left off, you were --

22 MR. HILL: Luke?

23 MR. ESCH: Yeah.

24 MR. HILL: Bill Sparks stepped out for a

25 minute. Can we wait for just a second?
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1 methodology that is not flawed.

2 The University of Wyoming scientists

3 have said for years, this is flawed, and nobody

4 would listen to them.

5 **Q** And that's a goal of the CBM task force?

6 **A Well, it's my goal.**

7 **Q** Okay. To address -- the goal is to

8 address situations such as yours?

9 **A Exactly, and to issue permits under**

10 **plausible methodology, not this flawed stuff. I**

11 **mean, if we keep issuing permits under the flawed**

12 **methodology, is the situation going to get better?**

13 **I doubt it. It's going to get worse. We've got**

14 **to start doing things right.**

15 **Q** So there's a process that is in the

16 works right now to address the situation; is that

17 what you are saying?

18 **A Correct.**

19 **Q** And you prefer to move forward with

20 permit challenges rather than wait on that

21 process?

22 **A Well, who knows how long the process is**

23 **going to take, you know. I have no idea how long**

24 **it will take. It could take six months. It could**

25 **take eight months. It could take two years. I**
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25

27

1 **have no idea.**

2 **Q** Do you intend on objecting to other
3 permits?

4 **A I certainly do, if they are issued under
5 Tier 2.**

6 **Q** So you would rather proceed with
7 objecting to the permits than waiting for the
8 process to run its course?

9 **A I'm going to do both.**

10 **Q** Okay. That is all I have. Thank you.

11 **A Thank you.**

12 MS. OCHS: Now you will get questions
13 from the gentlemen on the phone.

14 THE WITNESS: Okay.

15 MS. OCHS: We're ready.

16 MR. SPARKS: Okay.

17

18 EXAMINATION

19

20 QUESTIONS BY MR. SPARKS:

21 **Q** Mrs. West, my name is Bill Sparks. I'm
22 with the law firm of Beatty & Wozniak,
23 representing Stephens Energy Company in this
24 matter. And with me I have my colleague, Drake
25 Hill, with the same firm.

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1 **Q** (By Mr. Sparks) Have you read the
2 permit?

3 **A I have. It's been a while since I've
4 read it. I'm looking it over right now.**

5 **Q** Are you familiar with the three
6 impoundments that the permit authorizes discharge
7 into?

8 **A No. I have stated that I have not been
9 up to those impoundments.**

10 **Q** Okay. Also in front of you is probably
11 going to be two maps.

12 **A Yes, I have seen those maps.**

13 **Q** Okay.

14 **A And the one with the grid on it is
15 fairly clear, but the photographic map is
16 difficult for me to read because I can't see
17 where the roads are.**

18 **Q** Okay. Is it your understanding from
19 these maps that the Stephens reservoirs or
20 impoundments are where they appear to be in
21 relation to your land?

22 **A I would assume they are where they
23 appear to be. I don't know.**

24 **Q** Okay. Have you visually inspected the
25 three impoundments at issue in this appeal?

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26

28

1 We just have a couple of follow-up
2 questions for you.

3 **Q** First of all, how did you prepare for
4 this deposition? Did you review documents, or
5 did you consult with anyone prior to this
6 deposition?

7 **A We have reviewed the documents we got
8 from Dave Engels. And, of course, we have seen
9 what has happened on our land.**

10 **I mean, we're not scientists, and we
11 never have claimed to be scientists. However,
12 we're not entirely stupid; and we do know what
13 this methane discharge water has done to our land
14 and to other people's land.**

15 **Q** All right. Prior to this deposition,
16 have you read -- are you familiar with the Wyoming
17 Permit 94056 that is at issue?

18 **A I would have to look at it and see.**

19 **Q** I believe it is Deposition Exhibit 6. I
20 can't recall.

21 MS. OCHS: It's Exhibit 3.

22 **Q** (By Mr. Sparks) Exhibit 3. Mrs. West,
23 have you read this permit?

24 THE WITNESS: What did he say?

25 MS. OCHS: Have you read this permit?

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1 **A No, I have not.**

2 **Q** When did you first become aware that
3 these three impoundments existed?

4 **A Well, I knew something existed up there,
5 but I didn't know it was these three impoundments,
6 because of the water flowing from that direction.
7 Now, there may be -- I don't know this.**

8 **It's possible there are other reservoirs
9 up there that are also causing impact. But --**

10 **Q** So whenever you reviewed the permit at
11 issue in this appeal, was that the first time you
12 became aware of these three impoundments?

13 **A Right.**

14 **Q** Okay.

15 **A I knew something up there was releasing
16 water, but I didn't know where it was or what it
17 was.**

18 **Q** And when do you think was the first time
19 you noticed that you believed water was being
20 produced from this area?

21 **A Oh, heavens, it's been years; and I
22 can't even tell you what year I first noticed it,
23 but it's been quite some time.**

24 **Q** Quite some time since when, you noticed
25 water in the stream; or you noticed --

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1 **A I noticed water that was flowing out of**
 2 **the culvert that crosses under the highway and**
 3 **into the tributary which flows into Spotted Horse**
 4 **Creek.**

5 **Q** And can you give us your best guess of
 6 when that might have been, your first noticing of
 7 that?

8 **A Oh, I suppose it's been -- I honestly**
 9 **don't know. It's been a long time.**

10 **Q** That's fine.

11 **A And it would just be a guess if I told**
 12 **you a certain number.**

13 **Q** That's fine. As to these three
 14 impoundments, do you have any evidence that these
 15 three specific impoundments have ever leaked?

16 **A No, I don't. But if they have never**
 17 **leaked, they will be the first in the history of**
 18 **Wyoming.**

19 **Q** But you have no evidence that these
 20 three have --

21 **A No.**

22 **Q** Do you have any evidence that these
 23 three impoundments have ever seeped, whereas water
 24 has traveled from the bottom of the permit and
 25 resurfaced somewhere else away from the

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1 **operations that are not conducted on our lands**
 2 **will reach our lands.**

3 **Q** So the water that you are seeing could
 4 have been coming from those impoundments?

5 **A No. No, it's not coming from that one.**

6 **Q** I'm sorry. You said earlier that you
 7 had visually inspected other impoundments in the
 8 area near these three, correct?

9 **A I don't believe I said that.**

10 **Q** Okay. Well, have you visually
 11 inspected --

12 **A I have visually inspected other**
 13 **impoundments. I have inspected the Wolf pit,**
 14 **which is up above our land on Spotted Horse Creek.**

15 **I can't tell you just the exact location**
 16 **of it. I have inspected the Store reservoir. I**
 17 **have inspected reservoirs that are on Werner land,**
 18 **W-E-R-N-E-R, Werner land.**

19 **Q** My real question is, as you see on the
 20 map there the location of those three --

21 **A Correct.**

22 **Q** -- Stephens reservoirs, have you
 23 inspected any other permits in that area?

24 **A No.**

25 **Q** Thank you. I would like to also refer
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1 impoundment? Do you have any evidence that that
 2 has happened?

3 **A Well, I've seen it crossing the highway**
 4 **and flowing into the tributary that meets up with**
 5 **Spotted Horse Creek.**

6 **Q** But do you have evidence that it goes
 7 back to these three impoundments?

8 **A No. As I have stated, I have not been**
 9 **up to these three impoundments. However, it flows**
 10 **from the direction these three impoundments are;**
 11 **therefore, I believe it's reasonable to assume**
 12 **that's where it's coming from.**

13 **Q** Are you aware that there are other
 14 impoundments in this area?

15 **A Oh, of course.**

16 **Q** Have you ever visually inspected any of
 17 those?

18 **A I have inspected a few, yes. I've**
 19 **inspected the Store reservoir which is across from**
 20 **Spotted Horse.**

21 **Q** Were those reservoirs showing signs of
 22 leakage and seepage?

23 **A Yes, they are. And we went to court and**
 24 **had that stopped because our surface-use agreement**
 25 **with Yates says that no water from any of their**

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1 you to the Wyoming Permit 94056 where it states
 2 that the permittee is required to contain all of
 3 effluent -- do you see that part of the permit?

4 I apologize, I wish I was there and
 5 could point my finger right to it.

6 **A Okay. I see it.**

7 **Q** Do you understand that that requirement
 8 can require Stephens to contain all effluent in
 9 its three impoundments?

10 **A Yes. However, this does not mean what**
 11 **your average person would think it means. This**
 12 **says they have to contain it all.**

13 **However, it is allowed to seep out of**
 14 **these reservoirs. It is allowed to overtop the**
 15 **reservoirs in the event of storms. So it is not**
 16 **total containment.**

17 **Q** If it did leak or seep or overtop, would
 18 that be a violation of this permit?

19 **A Probably not. However this permit was**
 20 **issued under Tier 2, and Tier 2 has been proven**
 21 **scientifically invalid.**

22 **Q** Ma'am, I'm not -- how is it proven
 23 scientifically invalid?

24 **A They had scientists from the University**
 25 **of Wyoming. They had scientists come up from New**

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1 **Mexico, and they say that Tier 2 is scientifically**
2 **invalid. And I'm not a scientist, but I take**
3 **their word for it.**

4 **Q** Under this permit, without prior
5 authorization, Stephens is not allowed to
6 discharge water, correct?

7 **A In the event that such an authorization**
8 **for release is granted, the authorization letter**
9 **will specify the release volume, duration and**
10 **individual reservoirs covered.**

11 **Q** Okay --

12 **A However, we all know that the BLM and**
13 **the DEQ do not have enough employees to constantly**
14 **be checking on all of these reservoirs.**

15 **Q** Again, do you know if the DEQ has found
16 Stephens to be in violation of this permit?

17 **A No, I don't.**

18 **Q** Do you have any evidence that these
19 impoundments have done what you just suggested
20 that they do, either overtop or leak?

21 **A Well, I'm sure they do. I don't think**
22 **there's a reservoir or an impoundment in the state**
23 **unless it is lined that does not overtop or leak.**

24 **Q** But as to these three, you have no
25 evidence, correct?

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1 regarding your specific evidence. I do apologize
2 if it seems repetitive.

3 But do you have any specific evidence
4 regarding the loss of crop production as it
5 relates to discharges from these three
6 impoundments?

7 **A Well, I can't tell you what percentage**
8 **of our crop losses have been from these three**
9 **impoundments; however, I can tell you we have lost**
10 **nearly 100 acres of prime hay meadow which my**
11 **husband has spent years reclaiming.**

12 **We have lost more than 200 old-stand**
13 **cottonwood trees which will never be replaced in**
14 **my lifetime. But as to the percentage, no, I**
15 **can't tell you.**

16 **Q** I'll rephrase. Do you have any evidence
17 that attributes those losses to the water involved
18 with the three impoundments at issue in this
19 permit?

20 **A Since the water from these three**
21 **impoundments flows into Spotted Horse Creek with**
22 **water from other impoundments, I would say I'm**
23 **reasonably certain that it has contributed to the**
24 **problem.**

25 **Q** Do you have specific evidence of that?
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1 **A Pardon?**

2 **Q** But as to these three impoundments, you
3 have no specific evidence that they have?

4 **A No. However, I have seen the water**
5 **running into the Spotted Horse Creek and crossing**
6 **the highway. So I think that's fairly reasonable**
7 **evidence.**

8 **Q** Do you have any evidence where that
9 water came from?

10 **A No. As I have said, I have not been up**
11 **to the reservoirs. However, once the snow is**
12 **gone, believe me, I will go up to those**
13 **reservoirs.**

14 **Q** Are you aware that these three
15 impoundments are located on private land?

16 **A Yes.**

17 **Q** Okay. I just want to make sure you
18 don't get in trouble with the --

19 **A Well, you know, in our area of the state**
20 **any of our neighbors can come on our land at any**
21 **time for any reason. And I think that is the**
22 **general rule.**

23 **I don't know about other areas of the**
24 **state, but that is how it is where we live.**

25 **Q** Understood. One final last question

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1 **A Have I measured the amount of water, no.**

2 **Q** Do you have evidence that it's the water
3 from these three impoundments that has caused the
4 decrease in crop production?

5 **A Well, since the water from other**
6 **impoundments are causing the decrease in crop**
7 **production, I think it is reasonable to assume**
8 **that the water from these three impoundments also**
9 **are contributing to the problem.**

10 **Q** I apologize, ma'am. I'm not asking you
11 to make an assumption. I'm asking if you have any
12 specific evidence of --

13 **A No.**

14 **Q** Okay. Thank you.

15 MR. ESCH: Just two follow-up questions.

EXAMINATION

19 QUESTIONS BY MR. ESCH:

20 **Q** Are you a member of the Powder River
21 Basin Resource Council?

22 **A I most certainly am and very proud of**
23 **it.**

24 **Q** Are you involved in that organization in
25 any other capacity?

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1 **A Right now, no, I'm not. I was**
 2 **vice-chair for a year.**
 3 **Q** You mean vice-chair of the Board of
 4 Directors?
 5 **A Yes.**
 6 **Q** Okay. I believe that's all we have.
 7 MS. OCHS: Give us just a moment,
 8 please.
 9
 10 (Whereupon a discussion was held off the
 11 record, after which the proceedings continued as
 12 follows:)
 13
 14 MS. OCHS: I think we're good.
 15 MR. ESCH: Read and sign.
 16 MR. SPARKS: Thank you, Mrs. West, we
 17 appreciate it.
 18 THE WITNESS: You are welcome.
 19 MR. ESCH: Off the record.
 20
 21 (Whereupon Deposition Proceedings
 22 were concluded at 3:30 p.m. on
 23 Wednesday, January 13th, 2009.)
 24
 25 (SIGNATURE REQUESTED)
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1 DEPONENT'S CERTIFICATE
 2
 3
 4 I, MARGE WEST, do hereby certify that I have
 5 read the foregoing transcript of my testimony
 6 consisting of 37 pages taken on January 13th,
 7 2010, and that the same is a full, true and
 8 correct record of my deposition.
 9
 10 _____
 11 MARGE WEST
 12
 13 () No changes () Changes attached
 14
 15 Subscribed and sworn to before me this.
 16 ____ day of _____, 2010.
 17
 18 _____
 19 Notary Public
 20
 21
 22 My Commission Expires:
 23 October 13th, 2012
 24
 25 O'BRYAN & O'BRYAN REPORTING SERVICE
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1 REPORTER'S CERTIFICATE
 2
 3 I, CAROL A. O'BRYAN, a Certified Court
 4 Reporter and a Notary Public of the State of
 5 Wyoming, do hereby certify that MARGE WEST was by
 6 me first duly sworn to testify to the truth, the
 7 whole truth, and nothing but the truth;
 8
 9 That the foregoing transcript, consisting
 10 of 37 typewritten pages, is a true record of the
 11 testimony given by the said deponent, together
 12 with all other proceedings herein contained.
 13
 14 IN WITNESS WHEREOF, I have hereunto set
 15 my hand and affixed my Notarial Seal this 1st day
 16 of February, 2010.
 17
 18
 19 _____
 20 Carol A. O'Bryan
 21 Certified Court Reporter
 22
 23 My Commission Expires:
 24 October 13th, 2012
 25
 O'BRYAN & O'BRYAN REPORTING SERVICE
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1 SIGNATURE PAGE
 2 I, MARGE WEST, the aforementioned
 3 witness, have read my deposition transcript; and
 4 have made the following corrections:
 5
 6 REASONS 1-- Clarify the Record
 7 FOR CHANGES: 2-- Conform to Facts
 8 3-- Correct transcription error
 9
 10 Use 1, 2, 3
 11 Correction As Reason for
 12
 13 Page Line (Change from) (Change to) Change
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 MARGE WEST
 20 SUBSCRIBED AND SWORN TO before me this
 21 ____ day of _____, 2010 by _____.
 22
 23 _____
 24 Notary Public
 25 My Commission Expires: _____
 O'BRYAN & O'BRYAN REPORTING SERVICE
 (307) 672-3354

1 CAROL A. O'BRYAN, CCR
 2 6 Cottonwood Drive
 3 Sheridan, Wyoming 82801
 307-672-3354 307-751-6823 (cell)
 4 carolobryan@bresnan.net

5 Marge West
 628 SA Road
 6 Arvada, WY 82831

7 Date: 2-1-10

8 -----
 9 Re: DEQ Matter

10 Dear Marge,

11 I am enclosing the original of the transcript
 12 of your deposition in the above-entitled matter
 for your convenience in reading and signing your
 deposition.

13 I would appreciate if you could read your
 14 depo, return the original deposition with the
 signature pages attached to Mr. Esch, who took
 15 your deposition, within the next 30 days so the
 original may be prepared for delivery and use in
 the court case in this matter. Please return the
 16 original depo in the addressed envelope I'm
 17 enclosing for your convenience in returning it.

18 The necessary pages -- which are marked with
 tabs so you can easily find where to sign -- are
 at the back of your deposition. Please do not
 19 mark on the face of the deposition, but use the
 attached forms, if necessary, to make corrections.

20 Please remember that you must sign before a
 21 Notary Public, so please indicate the corrections
 as you read but do not sign until you are before
 the notary.

22 Very truly yours,

23
 24 Carol A. O'Bryan
 25 Certified Court Reporter

Enc. O'BRYAN & O'BRYAN REPORTING SERVICE
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Exhibit 2

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Docket Number: 09-3807

IN THE MATTER OF THE)
APPEAL OF POWDER RIVER)
BASIN RESOURCE COUNCIL,)
AND WILLIAM F. WEST)
RANCH, LLC, FROM WYPDES)
PERMIT NO. WY0094056)

DEPOSITION OF WILLIAM F. WEST

Taken on behalf of the Wyoming DEQ

12:50 p.m., Wednesday
January 13th, 2010

PURSUANT TO AGREEMENT, the Deposition of
WILLIAM F. WEST was taken in accordance with the
applicable Rules of Civil Procedure in the Offices
of Davis & Cannon, 40 North Main Street, Sheridan,
Wyoming, before Carol A. O'Bryan, Certified Court
Reporter, and a Notary Public in and for the State
of Wyoming.

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EXHIBIT INDEX
MARKED FOR
IDENTIFICATION

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25

Deposition Exhibit 7.....4
Notice of Deposition of
William West

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A P P E A R A N C E S

For the Wests: DAVIS & CANNON, LLP
Attorneys at Law
40 North Main Street
Sheridan, WY 82801

By: Alison Ochs, Esq.

For the DEQ: WYOMING AG'S OFFICE
Attorneys at Law
123 Capitol Building
Cheyenne, WY 82002

By: Luke Esch, Esq.

For Stephens Energy Company: BEATTY & WOZNIAK, PC
216 Sixteenth Street
Suite 1100
Denver, CO 80202-5115

By: William Sparks, Esq.
Drake Hill, Esq.
(Appearing via telephone)

ALSO PRESENT: Jill Morrison

I N D E X

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DEPOSITION OF WILLIAM F. WEST:

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P R O C E E D I N G S

B I L L W E S T,

having been first duly sworn to tell the
truth, testified as follows:

E X A M I N A T I O N

QUESTIONS BY MR. ESCH:

Q Mr. West, my name is Luke Esch. I
represent the Wyoming Department of Environmental
Quality.

Could you please state your name for the
record.

A Bill West.

Q And you represent William F. West Ranch,
LLC; is that correct?

A That's right.

(Whereupon the document referred to by
counsel was marked for identification as
Deposition Exhibit 7, after which the proceedings
continued as follows:)

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1 **Q** (By Mr. Esch) And before we get
 2 started, I'd like to hand you that document. This
 3 is the Notice of Deposition for this deposition.
 4 And this deposition reads, "Respondent DEQ
 5 requests that the deponent bring to the deposition
 6 such materials as he may need to refer to for
 7 discussing his Answers to Interrogatories Numbers
 8 1, 2, 3, 4, 7, 8 and 9 of DEQ's First Discovery
 9 Request." Have you done that?

10 **A Yes.**

11 **Q** So, now, back to West Ranch, what is
 12 your position at William F. West Ranch, LLC?

13 **A I'm owner/operator.**

14 **Q** And I'll just refer to that as West
 15 Ranch for the duration of this deposition for
 16 ease.

17 **A Okay.**

18 **Q** What are your day-to-day duties?

19 **A Typical ranching opportunities, feeding
 20 cattle, preparing machinery in the wintertime,
 21 farming in the summertime.**

22 **At the present time I'm doing repairs
 23 and hauling wheat to Gillette on a daily basis.**

24 **Q** So do your duties include irrigation of
 25 the West Ranch?

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1 **Q** Your legal team did?

2 **A Well, the Kate Fox and her associates.**

3 **Q** But you provided the factual information
 4 for it?

5 **A Yes.**

6 **Q** Okay. So I'm going to ask you a few
 7 questions regarding your responses to our
 8 interrogatories in specific. If I could refer you
 9 to Page 2, Interrogatory Number 1 response to
 10 Request for Admission Number 1.

11 It says, "The permit imposes no
 12 requirement that CBM water be treated prior to
 13 discharge. Petitioners are also concerned that it
 14 may adversely affect or impact livestock; however,
 15 petitioners do not contest the petition on these
 16 grounds but limit their challenge to the permit's
 17 failure to properly establish permit terms for
 18 protecting irrigation uses as required by the
 19 Wyoming Environmental Quality Act and DEQ's water
 20 quality standards and rules and regulations."

21 Now, with regard to that, how does the
 22 permit fail to properly establish permit limits?

23 **A Well, there is limits and regulations of
 24 how much -- what the SAR and the EC requirements
 25 are, and they have always exceeded those limits.**

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1 **A Yes.**

2 **Q** And can you provide me a general idea of
 3 where your ranch is located?

4 **A We're located 46 miles northwest of
 5 Gillette, north of Spotted Horse, Wyoming.**

6 **Q** Okay. And how many head do you run
 7 normally?

8 **A About 300 head of cattle. And we
 9 background our calves through the winter.**

10 **Q** How many acres?

11 **A 13,000 acres in total.**

12 **Q** And it's a cow/calf operation; is that
 13 correct?

14 **A Yes. Cow/calf and backgrounding of
 15 yearlings.**

16 **Q** And how much precipitation do you
 17 usually get?

18 **A I think we're in the area where they
 19 describe 16 to 20 inches a year.**

20 **Q** Okay. Now, let's move on to your
 21 answers, Petitioner's Response to Wyoming
 22 Department of Environmental Quality's First
 23 Discovery Request. Did you provide the answers to
 24 this discovery request?

25 **A Yes, our legal team did.**

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1 **Always been worse quality than what the DEQ has
 2 specified.**

3 **Q** And could you be a little more specific
 4 on what limits you mean for me?

5 **A Well, I think that they were supposed to
 6 have an SAR of six to eight or less or an EC of
 7 2000 or less. And the water has always been a
 8 worse quality than that, always exceeded those
 9 limits, that has come out across us.**

10 **Q** The permit limits for this permit?

11 **A Yeah.**

12 **Q** Okay. I'm a little confused here. Let
 13 me try to rephrase that. Correct me if I'm wrong,
 14 if I'm phrasing this the wrong way.

15 You are -- the permit failed to
 16 establish proper limits because it exceeded the
 17 requirement that the EC be between six and eight
 18 or an EC of 2000 or less?

19 **A Uh-huh.**

20 **Q** Could you describe where this
 21 requirement is located?

22 **A Where they are located?**

23 **Q** Well, what document sets forth these
 24 limits?

25 **A Well, our water hydrologist, Dave**

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9

1 **Engels, checked all of that out and --**
 2 MS. OCHS: If you don't know, it's okay
 3 to tell Luke that you don't know; or that you are
 4 relying on someone else for this information.
 5 **A Well, yeah, I'm relying on Dave Engels.**
 6 **Q** (By Mr. Esch) Okay. And I might not
 7 have mentioned that before. But if there is any
 8 confusion on the questions that I ask, just please
 9 ask me to rephrase it; and I'll be more than happy
 10 to do so.
 11 THE WITNESS: This is --
 12 MS. OCHS: That's from Randy Mesh.
 13 THE WITNESS: Okay. That's not the one
 14 that --
 15 MS. OCHS: Do you want some help?
 16 That's from Bill Barrett. There is no hurry,
 17 either. Just take your time. That's to John from
 18 EnTech.
 19 **A Yeah, that's it, EnTech.**
 20 **Q** (By Mr. Esch) That's one of the
 21 documents that was produced?
 22 MS. OCHS: For the record, this is
 23 PRBRC/West Document 13.
 24 **Q** (By Mr. Esch) Okay.
 25 **A In Section 2. Dave Engle took samples**
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1 **from the creek, Spotted Horse Creek drainage at**
 2 **the time of -- that our coalbed methane discharges**
 3 **had commenced. Specific conductions of 2540,**
 4 **3120, 3650 and 3100, so the absorption ratios were**
 5 **respectively 21, 29, 18, and 18 is what we tested.**
 6 **Q** Okay. Now, this document that you
 7 referred to, it does not -- it's not regarding the
 8 permit 0094056; is that correct?
 9 **A No, this is what we did. This is the**
 10 **test we did on the creek.**
 11 **Q** So this is the comments on Devon Energy
 12 Production Company's September 25th, 2000 letter
 13 EnTech Number 00003?
 14 **A It was Devon Water at that time. But**
 15 **that's why we object to all of this, because**
 16 **that's the kind of water that comes down the**
 17 **creek.**
 18 **Q** Okay.
 19 **A From everywhere, from all areas. It's**
 20 **co-mingled from all of the wells, different**
 21 **companies; and it's all come down the creek**
 22 **collectively.**
 23 **Q** Okay. Are you familiar with the terms
 24 of this permit, permit 4056?
 25 **A No.**
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11

1 **Q** Okay. So you are not aware that there
 2 is a containment requirement on this permit?
 3 **A I know all of the permits have**
 4 **containment requirements, but none of them have**
 5 **ever lived up to it.**
 6 **Q** Well -- so if the water was contained in
 7 a reservoir, would you have a problem with the
 8 permit if the water was contained?
 9 **A How would you do that?**
 10 **Q** Well, that's not the question I asked.
 11 If the water was contained in a reservoir, would
 12 you have a problem with the permit?
 13 **A I wouldn't have a problem, but can you**
 14 **say exactly what those containments would be? How**
 15 **would you do that? All -- I have 20 reservoirs on**
 16 **my place, containment ponds; and every one of them**
 17 **leaks and every one of them has been overtops.**
 18 **Q** Do you know who the companies are that
 19 are owning those?
 20 **A Well, there's Yates, Devon, CMS.**
 21 **There's two more on Powder River, but they are not**
 22 **in the Powder River area.**
 23 **Q** But not Stephens Energy?
 24 **A No, I've never dealt with Stephens**
 25 **Energy.**
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1 **Q** Okay.
 2 **A I know from experience that any**
 3 **containment ponds anywhere all leak. The only way**
 4 **they can keep them from leaking is to line them**
 5 **with a fabric of some sort.**
 6 **Q** And that's based on your experience?
 7 **A Yes.**
 8 **Q** You don't have any other evidence to
 9 support that?
 10 **A Just what I can see from looking at**
 11 **them. Anyplace -- I've seen hundreds of dams, and**
 12 **every one of them have leaked.**
 13 **Q** So regardless of the permit terms --
 14 excuse me -- the effluent limits, you would be
 15 opposed to this permit because the reservoirs
 16 leak; is that what I'm hearing you saying?
 17 **A That's right.**
 18 **Q** Okay. This was brought up earlier in
 19 the other deposition, but how far downstream is
 20 your property from the closest outfall regarding
 21 this permit?
 22 **A Five, six miles.**
 23 **Q** Okay. And that's three miles, not as
 24 the bird flies?
 25 **A That would be stream miles, yes.**
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1 Q Okay. So your belief is that the
2 reservoirs are leaking -- well, would leak; and
3 that leakage would eventually impact your
4 property?

5 A Yes.

6 Q Do you have any idea how long that might
7 take?

8 A We tried to follow the flow of water one
9 time, and it's very slow. It took days for it to
10 get that far.

11 Q Six miles?

12 A Yes. Took days for it to travel. Less
13 than a mile a day.

14 Q And that would be - was that traveling
15 on top of the ground, or how did you -- how did
16 this --

17 A We checked on top of the ground.

18 Q Okay.

19 A We measured it and checked underground.

20 Q Was this from another reservoir on your
21 property?

22 A Yes. It would be - actually, we tested
23 it on our property to see how fast it was going,
24 how long it would take to travel. We was going to
25 do the whole creek, but it would just take too

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1 long, didn't want to spend that much time to check
2 the flow.

3 Q I understand. Do you own six miles of
4 bottom land here?

5 A No, I don't. Two miles, maybe.

6 Q So days might be a guess on how long it
7 might take to flow six miles?

8 A Yes.

9 Q Okay.

10 A Because we just -- it went so slow that
11 we couldn't follow it. Put dye in the creek and
12 tried to follow the dye, and it was really slow.
13 And, of course, water that comes down the creek
14 goes underground at times.

15 What we were following was on top, but
16 there is different portions that would flow on top
17 of the ground for a while and then go underground.
18 There are many old channels in the creek that
19 normally flood and the channels will cut and fill.
20 The channels would cut out in one place for years,
21 maybe 100 years and then eventually make a new
22 channel and go another place.

23 But in the bottom of channels is rock
24 and gravel. As the dirt and sediment washes away
25 and leaves all the gravel on the bottom, and

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1 that's a perfect place for water to go underground
2 in those channels.

3 And then you get places where there's
4 blockage, then the water comes to the surface. It
5 leaves a white spot on the ground, leaves these
6 white alkali spots, and that's what we're
7 concerned with is these alkali spots from water
8 coming from up under the ground.

9 Q Okay.

10 A If we have a deep channel, I've been
11 trying to get the channels dug deeper across my
12 place. We did that eight or nine years ago and
13 they are full. They are full of sediment now, and
14 they need to be cleaned out again. And I've been
15 unsuccessful getting anybody to do it.

16 Q Okay. So in your opinion, would the
17 water travel faster on top of the ground or below
18 the ground?

19 A Well, it would be faster on top of the
20 ground.

21 Q Okay. Moving on, let's go to request
22 for Admission Number 2. No, pardon me. It's
23 going to be request for Admission Number 3. At
24 the bottom, the second paragraph says,

25 "Measurements of water quality in Spotted Horse
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1 Creek indicate that CBM water discharged under
2 with these permits..." --

3 MS. OCHS: Wait. We're not following
4 you. Request for Admission Number 3?

5 MR. ESCH: But it's under Interrogatory
6 Number 1. There was a number of areas where we
7 asked in the interrogatories for explanations of
8 why they denied any statement in the request for
9 admission.

10 MS. OCHS: What page?

11 MR. ESCH: Page Number 3. I'll be more
12 clear on that in the future which page we're
13 following.

14 Q Second paragraph. "Measurements of
15 water quality in Spotted Horse Creek indicate that
16 CBM water discharged under with these permits
17 results in water reaching irrigated lands that is
18 not suitable for irrigation of crops grown there
19 since 1975."

20 So let's discuss this for a minute.
21 Tell me about these measurements that you took.

22 A Okay.

23 Q Where did you take them at?

24 A There was different places on our land.
25 It started at Section 36, took samples there. And

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1 **the next section down was -- 22, 25 and 26 is**
 2 **where they were taken along the creek channel.**
 3 **Q** What was the last one again?
 4 **A 26.**
 5 MS. OCHS: 26.
 6 **Q** (By Mr. Esch) Okay. Thank you. What
 7 was the process you took in taking the samples?
 8 **A Dave Engels took the samples himself in**
 9 **a water sample jug. He brought them up to -- oh,**
 10 **here in Sheridan, the water quality testing**
 11 **facility here in Sheridan.**
 12 **Q** Were you with him when he took the
 13 samples?
 14 **A Yes.**
 15 **Q** Did you see where in the stream he took
 16 the samples? Was it in a pool area?
 17 **A Running area, running water area.**
 18 **Q** Running water area? What time of year
 19 was it?
 20 **A Well --**
 21 **Q** Well, just to speed it up, we heard this
 22 morning it was May, around May; is that correct?
 23 **A I think so.**
 24 **Q** Okay. Were any of the locations in
 25 close proximity to CBM discharges from other
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1 **Q** Okay.
 2 **A -- this particular test. There has been**
 3 **tests later than that, but --**
 4 **Q** All right. We'll move on from that
 5 then, and move on to Interrogatory Number 2 on
 6 Page 4. Says, "The permit establishes no effluent
 7 limit for SAR and imposes no volumetric limit on
 8 discharge, both of which are necessary to protect
 9 water quality for agricultural uses."
 10 So why are both necessary to protect
 11 agricultural uses on your property?
 12 **A Well, that's getting pretty technical.**
 13 **But as the farmer's view, it's salt. Crops won't**
 14 **grow where there's saltwater.**
 15 **Q** And so you would request the DEQ put a
 16 volumetric limit on this permit?
 17 **A Yes.**
 18 **Q** And in your opinion, a containment is
 19 not a volumetric limit?
 20 **A Volumetric limits?**
 21 **Q** Limit the amount of water.
 22 **A Limiting the amount of water. Well,**
 23 **zero would be a good limit.**
 24 **Q** Zero? Okay. And it also says that you
 25 are concerned about the SAR. So in your opinion,
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1 wells?
 2 **A It would probably be within half a mile**
 3 **of wells, because there's saturated wells all up**
 4 **and down the creek as thick as they can put them.**
 5 **Q** Okay. So a half a mile?
 6 **A Could be.**
 7 **Q** Are you familiar with that well that's
 8 within a half mile up? When I say "familiar," I
 9 mean, do you know the effluent limits that that
 10 discharges at?
 11 **A Not specifically, but I can say**
 12 **generally what all of the wells are. The SARs run**
 13 **from 18 to 24 on most of the wells.**
 14 **Q** That's the discharge limit?
 15 **A Right at the well.**
 16 **Q** End of pipe?
 17 **A Uh-huh.**
 18 **Q** Okay.
 19 **A I think most of the water came out of**
 20 **South Prong Creek.**
 21 **Q** So were there any recent precipitation
 22 events that you can remember about that since that
 23 time?
 24 **A About that time? No, not specifically.**
 25 **That's been eight years or something, six years --**
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1 the permit has no controls in place for SAR, as
 2 well?
 3 MS. OCHS: Objection. Characterization.
 4 Maybe you could rephrase.
 5 **Q** (By Mr. Esch) Are you aware that the
 6 permit does have SAR limits in place?
 7 **A I don't know the permit.**
 8 **Q** Okay. All right. And also in
 9 Interrogatory Number 2 it says, "After 1975 and
 10 prior to CBM discharges in the Spotted Horse
 11 Creek, West Ranch irrigated native grass hay
 12 meadows in the bottom lands along Spotted Horse
 13 Creek."
 14 So let's discuss the operation a little
 15 more. How long has West Ranch been under your
 16 management?
 17 **A 50 years.**
 18 **Q** 50 years? And can you describe the
 19 irrigation processes that West Ranch uses?
 20 **A What we used originally was spreader**
 21 **dikes to block the channel and spread the water**
 22 **across the meadows. Then after CBM come in, we**
 23 **couldn't use the water. The spreader dikes would**
 24 **hold water; but anytime water stands in a place,**
 25 **it salts the meadows.**
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1 **So you have to drain all that water out.**
 2 **You can't have standing water anywhere. So we**
 3 **took out all the spreader dikes at that time.**
 4 **And now the only irrigation we get is**
 5 **during the flood season -- which it was before**
 6 **also -- but get a large volume of water, either**
 7 **snow melt or rain; and it will flood out of the**
 8 **channels and flood our meadows.**
 9 **So now we don't use spreader dikes. We**
 10 **just rely on large floods, and we have some**
 11 **headgates that we close. We set the headgates to**
 12 **take the methane water, a fourth open to take the**
 13 **methane water. But when the floods come, you**
 14 **know, it spreads the water.**
 15 **Q** So do you utilize CBM discharge water in
 16 your irrigation?
 17 **A We can't stop it.**
 18 **Q** So you do use it?
 19 **A It is a mix, of course. It just --**
 20 **methane itself we don't use. The only time we use**
 21 **the water is when we get flood water, but methane**
 22 **water runs down the channel; we don't use the**
 23 **methane water in any way unless it's during a**
 24 **flood stage.**
 25 **Q** So then you open your headgate and take

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1 **A We harvest -- normal haying operations**
 2 **is swathing it and windrowing it and baling.**
 3 **Q** What size of bales?
 4 **A In the last ten years we've used big**
 5 **round bales.**
 6 **Q** Okay. Is soil compaction an issue on
 7 the bottom lands?
 8 **A No. We don't use heavy equipment during**
 9 **any wet season. It's always dry when we hay in**
 10 **wet -- in dry season when we hay.**
 11 **Q** Okay.
 12 **A The sodium and salt and magnesium and**
 13 **stuff does tend to cause compaction.**
 14 **Q** And where do you get that information?
 15 **A It's normal scientific data, I think.**
 16 **Q** You can't tell me where it comes from?
 17 **A I can't tell you where it comes from,**
 18 **but it's information that salt causes soil to**
 19 **compact.**
 20 **Q** Okay.
 21 MR. ESCH: Do you want to take five
 22 minutes?
 23 THE WITNESS: That would be nice, yes.
 24 MR. ESCH: Drake? Bill, are you guys
 25 okay with taking five?

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1 the water?
 2 **A Well, the headgate is in the creek, in**
 3 **the creek channel; and it bypasses the methane**
 4 **during non-flood season. But during the flood**
 5 **season, it takes all of the water and puts it**
 6 **across our meadow.**
 7 **Q** Okay. So before CBM, how many times a
 8 year were your bottom lands flooded by the use of
 9 spreader dikes?
 10 **A One to three times.**
 11 **Q** And prior to CBM, did you ever test the
 12 quality of your water that you used by the
 13 spreader dikes?
 14 **A No.**
 15 **Q** So you have no information to say that
 16 it wasn't higher than 2600 EC?
 17 **A I don't have any information, no. I**
 18 **don't have any tests, results.**
 19 **Q** Tell me about your irrigation and haying
 20 practices; did you use fertilizer on your meadows?
 21 **A No, not as a general thing, other than**
 22 **we have a feedlot that we spread waste from the**
 23 **feedlot on the meadows. But other than that, we**
 24 **don't use commercial fertilizers.**
 25 **Q** Do you hay it; how do you harvest it?

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1 MR. SPARKS: Yes, that will be fine.
 2 MR. ESCH: Okay. Off the record. We'll
 3 take about five minutes.
 4
 5 (Whereupon a break was taken, after
 6 which the proceedings continued as follows:)
 7 MR. ESCH: Bill, Drake, you guys ready?
 8 MR. HILL: Oh, hey, you guys. Bill
 9 stepped out, if we could just have a minute.
 10 MR. ESCH: No problem.
 11 MR. HILL: We are ready now.
 12 MR. ESCH: Back on the record.
 13 **Q** Mr. West, I'll refer you to
 14 Interrogatory Number 4 now, on Page 6. In the
 15 middle of the page it says, "West Ranch has not
 16 been able to use any of the natural flow for
 17 irrigation in Spotted Horse Creek since 1999 due
 18 to the creek being saturated with poor quality,
 19 high sodium and high salinity CBM discharge
 20 water."
 21 So what led up to the West Ranch finally
 22 giving up on natural irrigation?
 23 **A It's been an ongoing thing. I did see a**
 24 **while ago that we use the flood water to irrigate**
 25 **with; and we still do, but it just hasn't worked**

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1 **out very well because of the quality of the water.**
 2 **It just --**
 3 **Q** Would it be a fair statement to say your
 4 personal observations show that the water has been
 5 in poorer quality since CBM began?
 6 **A I think that's the most part of it, yes.**
 7 **Q** Okay. When did you first determine that
 8 the natural flow was saturated with poor quality,
 9 high sodium CBM discharge water?
 10 **A We knew that from the beginning. We had**
 11 **a discovery meeting in 1999, the fall of '99.**
 12 **They were just starting to drill in the area. And**
 13 **one well drilled in the fall of '99, it produced**
 14 **water all winter that run down across us.**
 15 **But I went to this meeting with the oil**
 16 **companies, with the gas companies; and they wanted**
 17 **to know what kind of problems we had. And I said,**
 18 **what's going to happen when there's room for**
 19 **thousands of wells upstream from us? We don't**
 20 **want that water across us.**
 21 **And they told us that will never happen.**
 22 **There will never be that many wells, and it will**
 23 **never be a problem. So here we are ten years**
 24 **later.**
 25 **Q** Okay. Well, still on Interrogatory
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1 **in the low places. There was places where the**
 2 **water stands on the meadows and fill in those low**
 3 **places to get the flow to go to the channel so it**
 4 **will drain better.**
 5 **Q** Okay. If called to testify at the
 6 hearing, what would your testimony be regarding
 7 the limits of the permit?
 8 **A What I would think the limits should be?**
 9 **Q** Your view of the limits that are in the
 10 permit itself.
 11 **A I don't have the permit. I don't know**
 12 **what it says.**
 13 **Q** Well, it's Deposition Exhibit 3, I
 14 believe.
 15 MS. OCHS: Luke, do you have a certain
 16 place you want to point him to?
 17 MR. ESCH: Well, really, I'll withdraw
 18 that question. I was just trying to get a general
 19 answer. I'll withdraw that question.
 20 **Q** And, actually, Mr. West, that's all I
 21 have for you.
 22 **A Well, okay.**
 23 MS. OCHS: We have the attorneys on the
 24 other end, too.
 25 Gentlemen?
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1 Number 4, you refer to extensive reclamation
 2 activities. Can you tell me a little more about
 3 the reclamation activities?
 4 **A What we did?**
 5 **Q** The 500 truckloads of soil.
 6 **A Oh.**
 7 **Q** Specifically, where did the soil come
 8 from?
 9 **A It came from the side hills there, so I**
 10 **was talking about cut and erosion. It was soil**
 11 **that had been washed off the side hills and**
 12 **accumulated on the side hills and the bench lands.**
 13 **And when I dug them up, I found Buffalo**
 14 **bones in the sands and silt, mostly sandy, silt**
 15 **and -- but it's dirt that had washed off the hill**
 16 **sides. It's fresh water, and it was -- it was not**
 17 **a rich soil.**
 18 **And it was not topsoil, but it was just**
 19 **a sandy loam that was a neutral in acidity.**
 20 **Q** Did you conduct any tests of the soil?
 21 **A No, just other than we put it on the**
 22 **land that grows crops.**
 23 **Q** Did you do the reclamation work
 24 yourself?
 25 **A Yes, I did it myself. Used it to fill**
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1 MR. SPARKS: Yes, ma'am.
 2 MS. OCHS: You are up.
 3 MR. SPARKS: Very good.
 4
 5
 6
 7 EXAMINATION
 8
 9 QUESTIONS BY MR. SPARKS:
 10 **Q** Mr. West, my name is Bill Sparks; and
 11 with me I've got Drake Hill. We are with the law
 12 firm of Beatty Wozniak. Hello?
 13 MS. OCHS: Yeah, we're here. You guys
 14 may want to speak up a little bit. I've got it
 15 turned up pretty high here.
 16 MR. SPARKS: Okay.
 17 **Q** Mr. West, this is Bill Sparks. I'm with
 18 the law firm of Beatty Wozniak, representing
 19 Stephens Energy in this appeal. And I've got
 20 Drake Hill with the same firm with me, as well.
 21 **A Yes.**
 22 **Q** Prior to your deposition today, what
 23 documents did you review, and who did you discuss
 24 your deposition with?
 25 **A With Kate Fox and Angela.**
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1 MS. OCHS: Alison.
 2 **A Alison.**
 3 MS. OCHS: You're all right.
 4 **Q** (By Mr. Sparks) And did you review any
 5 documents prior to your deposition?
 6 **A Just these -- just this paper I have in**
 7 **front of me here, these documents here**
 8 **(indicating).**
 9 MS. OCHS: He's referring to
 10 Petitioners' Responses to Wyoming Department of
 11 Environmental Quality's First Discovery Request,
 12 and he also has in front of him the Stephens
 13 Energy maps.
 14 **Q** (By Mr. Sparks) He did not review the
 15 maps prior to today, correct?
 16 **A Not these particular ones but other maps**
 17 **I've looked at.**
 18 **Q** Okay. Did you review the permit 94056
 19 issued to Cedar Ridge, which is now Stephens?
 20 **A No.**
 21 **Q** Had you ever reviewed that permit?
 22 **A I don't think so.**
 23 **Q** In -- one of the documents in front of
 24 you is Petitioners' Response to Stephens Energy
 25 Company's Request for Discovery. Did you assist
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1 were constructed in 2001 and 2002 and discharges
 2 were authorized into them in 2001 and 2002?
 3 **A No, I don't. I don't recollect that.**
 4 **Q** So the first time you became aware of
 5 these impoundments was with the approval of the
 6 permit now at issue?
 7 **A Yes.**
 8 **Q** I'll let you talk a little bit about the
 9 permit at issue. If you look on the first page of
 10 that permit, on the Statement of Basis, at the
 11 bottom it says, "Stephens is required to contain
 12 all effluent from the outfall of this on-channel
 13 facility." Do you see where it says that?
 14 **A Yes.**
 15 **Q** Are you aware, or to your knowledge, has
 16 Stephens ever not contained all of the effluent in
 17 these impoundments?
 18 **A The only thing I observed is where the**
 19 **creeks cross Highway 14/16, there has been water**
 20 **in there continuously during the summer in past**
 21 **years, in that drainage area.**
 22 **Q** Have you ever inspected that impoundment
 23 in that area to see if that water was coming from
 24 that impoundment?
 25 **A No.**
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1 in preparing these responses to discovery in these
 2 documents?
 3 **A No, I didn't personally.**
 4 **Q** If I could turn you to Petitioners'
 5 Response to Stephens Discovery Requests, is that
 6 document there? I believe it was Deposition
 7 Exhibit 3 earlier, but I don't have that in front
 8 of me.
 9 MS. OCHS: Let the record reflect that
 10 the Petitioners Responses to Stephens Energy
 11 Company's First Combined Discovery Request is in
 12 front of Mr. West, and I believe it's Exhibit 6.
 13 **Q** (By Mr. Sparks) Exhibit 6. Okay.
 14 Mr. West, have you personally inspected
 15 the three impoundments at issue in this appeal?
 16 **A No, I haven't.**
 17 **Q** Have you ever inspected them since 2001?
 18 **A No. No, it's hard to get to. There's**
 19 **quite a lot of snow out there now. I've looked at**
 20 **it, at the roads; but there's so much snow and no**
 21 **tracks. There has not been anybody in that area**
 22 **this winter.**
 23 **Q** So you've never visually inspected them?
 24 **A No.**
 25 **Q** Are you aware that these impoundments
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1 **Q** So, to your knowledge, that impoundment
 2 has never released water?
 3 **A I don't know that. All reservoirs seep**
 4 **and leak. All impoundments will leak underground.**
 5 **Q** To your knowledge, would you have any
 6 evidence that that specific impoundment has leaked
 7 or seeped?
 8 **A I have not looked at them personally,**
 9 **no.**
 10 **Q** That's not exactly what I was after. Do
 11 you have any evidence that that specific
 12 impoundment has leaked or seeped?
 13 **A No.**
 14 **Q** Do you have any evidence that any of the
 15 three impoundments at issue in this appeal have
 16 leaked or seeped?
 17 **A Not specifically, no. Water comes from**
 18 **that area. I don't know where it comes from, but**
 19 **it comes from that area.**
 20 **Q** Are you aware if the DEQ has ever found
 21 Stephens to be in violation of the permit at
 22 issue?
 23 **A I'm not aware of that.**
 24 **Q** And, again, you said you were not aware
 25 of the permits and these impoundments dated back
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33

1 in 2001. Do you recall when you became aware of
2 these impoundments, when did you first visually
3 see them?

4 **A I knew they were there from ever since**
5 **they have been drilling, but I've never been to**
6 **them personally. I knew that the impoundments**
7 **were there. I knew that they had methane activity**
8 **in the area.**

9 **Q** Is it your opinion that their existence
10 there at that point was impacting your operation?

11 **A It's an accumulative thing. There are**
12 **hundreds of wells upstream from us, and they all**
13 **add a little bit of water to the creek channel.**
14 **It's a drop here and a drop there, and it all**
15 **accumulates; and we're at the bottom of the creek**
16 **channel.**

17 **Q** But you had said earlier that you had no
18 evidence of any drops coming from this permit,
19 correct, or from these impoundments?

20 **A No, it's up to you to show us that it's**
21 **not coming down.**

22 **Q** But these impoundments are not
23 discharging into the creek, correct?

24 **A I have not been to see them. I don't**
25 **know.**

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35

1 MS. OCHS: Objection to the question. I
2 think he responded that he's not sure whether the
3 water that he sees is coming from these
4 impoundments or not. Could you please rephrase.

5 **Q** (By Mr. Sparks) Okay. One second.

6 Okay. In Petitioners' Response to
7 Stephens Discovery Request, in Request for
8 Admissions 16, 17 and 18, "Petitioners admit that
9 they have no evidence that any of the water has
10 left or escaped the impoundment."

11 My current question is, if that is what
12 petitioners are admitting, how are these
13 impoundments and this permit negatively impacting
14 your operation?

15 **A There are hundreds of impoundments**
16 **throughout the area. The water is coming from**
17 **somewhere. I don't know where it's coming from,**
18 **but it's accumulative value from -- they all have**
19 **the same thing.**

20 **They are supposed to be contained.**
21 **There's hundreds of ponds that are supposed to be**
22 **contained, But they aren't. They all leak, and**
23 **we're getting water from somewhere.**

24 **Q** I understand, sir, that you are unhappy
25 with the hundreds of thousands of impoundments,

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34

1 **Q** Under the permit, the permit says that
2 Stephens is required to contain all effluent,
3 correct?

4 **A Yes.**

5 **Q** And you've never seen any effluent come
6 out of the impoundment?

7 **A No. All I know is there is water coming**
8 **down the creek from that area.**

9 **Q** But you don't know where it's coming
10 from?

11 **A No.**

12 **Q** So what -- why did you decide to
13 challenge this particular permit?

14 **A Well, the buck stops here. You've got**
15 **to start someplace sometime.**

16 **Q** And why did you not choose to challenge
17 the permit that authorized these impoundments in
18 2001 and 2002?

19 **A I don't have a good answer for that.**

20 **Q** You stated earlier that you have no
21 evidence that any of these impoundments have
22 discharged any water. My question is, if these
23 impoundments have not discharged any water, how
24 would that impact your land and your farming
25 operation?

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36

1 but what I'm asking is whether or not these three
2 impoundments that you admitted are not discharging
3 any water are negatively impacting your --

4 MS. OCHS: I object to the phrasing of
5 the question. He did not say that they do not
6 leak. He says he has no specific evidence of them
7 leaking. There is a difference. Maybe you'd like
8 to rephrase.

9 **Q** (By Mr. Sparks) Yes. Based on your
10 admissions in Requests for Admissions 16, 17 and
11 18 where you admit that you have no evidence that
12 these impoundments are leaking or discharging any
13 water from the impoundments, how is it that these
14 impoundments are negatively impacting your
15 operation?

16 **A Well, where is the water coming from?**
17 **It's coming from somewhere up there. I don't know**
18 **where it's coming from, but we're getting water**
19 **from that area.**

20 **Q** Is it coming from other impoundments but
21 not these three?

22 **A I think it is coming from all**
23 **impoundments, including your three. Of the**
24 **hundreds of impoundments around, I've inspected**
25 **maybe 10 to 15 or 20 of the total; and the ones I**

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1 **inspected, they all leak from different areas.**
 2 **I have not looked at your three. If**
 3 **I've looked at 25 or 30, there's another 70 I**
 4 **haven't looked at.**
 5 **Q** One second.
 6 MS. OCHS: No problem.
 7 **Q** (By Mr. Sparks) Mr. West, have you
 8 sustained a loss in crop production from these
 9 three specific impoundments, not all of the
 10 impoundments in the area?
 11 **A I don't know.**
 12 **Q** So you cannot contribute any loss of
 13 crop production to these three specific
 14 impoundments?
 15 **A Not specifically, no.**
 16 **Q** Okay. Thank you.
 17 MR. SPARKS: Can we take a quick
 18 five-minute break, and we will have no more than
 19 two or three questions?
 20 MS. OCHS: We'll hold you to it.
 21 MR. SPARKS: Thank you.
 22
 23 (Whereupon a break was taken, after
 24 which the proceedings continued as follows:)
 25

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1 **never met you, but I've dealt with many methane**
 2 **companies and many people; and they all made**
 3 **promises that they never backed up.**
 4 **Q** Then, sir, are you a member of the
 5 Powder River Basin Resource Council?
 6 **A Yes.**
 7 **Q** Does the Powder River Basin Resource
 8 Council have any interest in your land?
 9 **A No interest in it, no.**
 10 MR. SPARKS: Thank you. That's all we
 11 have.
 12 MS. OCHS: Can I clarify what you mean
 13 by "interest"? A legal interest?
 14 MR. SPARKS: Any ownership or any other
 15 type of interest.
 16 MS. OCHS: A legal interest? I'm asking
 17 a question.
 18 MR. SPARKS: I think our question was,
 19 did they have any interest of any kind?
 20 MS. OCHS: So an interest --
 21 MR. SPARKS: Let Mr. West answer the
 22 question.
 23 MS. OCHS: I'm trying to help him
 24 understand it.
 25 MR. SPARKS: Well, we're going to object

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1 MS. OCHS: All right. We're ready.
 2 **Q** (By Mr. Sparks) Mr. West, in approving
 3 the permit 94056, what in your opinion should DEQ
 4 have done that it did not do?
 5 **A Enforce the regulations. They haven't**
 6 **enforced them. We've had many tests and they have**
 7 **issued violations of water quality and they**
 8 **haven't backed them up.**
 9 **Q** So they should have done that when they
 10 issued the permit?
 11 **A No, when we made our tests and when they**
 12 **were out here. Mr. Eisenhower was out and**
 13 **observed that there was violations of water**
 14 **quality, and they issued a violation; and it was**
 15 **never followed up. It was never corrected.**
 16 **Q** And that's something that Stephens'
 17 permit should have taken care of?
 18 **A That's why I'm upset. It hasn't been**
 19 **followed up on, and it will continue to do the**
 20 **same.**
 21 **Q** But that doesn't have anything to do
 22 specifically with Stephens, though, does it?
 23 **A Well, you are one of them. You will**
 24 **probably do the same as the rest of the companies**
 25 **have, in my opinion. I don't know you. I've**

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1 to your speaking objection and coaching the
 2 witness. In Wyoming the practice is very clear
 3 that we keep our objections as to form or in the
 4 briefest possible sense, so we'd ask you to adhere
 5 to that rule.
 6 MS. OCHS: By all means.
 7 Please answer the question, if you can.
 8 **A They have no interest in my land.**
 9 MR. SPARKS: That's all we were getting
 10 at. Thank you. No further questions.
 11 **Q** Thank you very much, Mr. West.
 12 **A You are welcome.**

EXAMINATION

16 QUESTIONS BY MS. OCHS:
 17 **Q** Now, Mr. West, I'm going to try to
 18 clarify the question that I think they were
 19 asking.
 20 Does Powder River Basin Resource Council
 21 hold any legal interest to your land?
 22 **A None whatsoever.**
 23 **Q** Do you think they have an interest in
 24 the quality of your land?
 25 **A I think so. They have given us advice**

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1 **that it supports -- they have given us support on**
 2 **how to do things, how to proceed.**
 3 **Q** And why would they have an interest in
 4 the quality of your land?
 5 **A Of everybody's land. Not just mine, but**
 6 **everybody's in the State of Wyoming.**
 7 **Q** Can you say why that might be?
 8 **A They just have an interest in protecting**
 9 **property rights for everyone.**
 10 **Q** Today you were asked why you never
 11 tested water prior to -- while you were using the
 12 spreader dikes. Why didn't you test the water?
 13 **A It was rain water, snow water. There**
 14 **was no reason to.**
 15 **Q** Did you have any problems with your
 16 crops?
 17 **A No, no problems as long as we keep the**
 18 **water moving. We knew the land was salty. The**
 19 **land is alkaline, to start with; and if you've got**
 20 **water standing on it, it alkalies the land worse.**
 21 **You've got to keep the water moving.**
 22 **Just adding more salt and sodium to the**
 23 **land is just that much more detrimental to the**
 24 **soil quality.**
 25 MS. OCHS: Can we take just a break for
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1 And you mentioned -- I believe you
 2 mentioned that all of these reservoirs have
 3 containment requirements -- or in your belief they
 4 have containment requirements, and they are
 5 leaking?
 6 **A Yes.**
 7 **Q** Okay. So if these reservoirs and these
 8 permits have containment requirements and they are
 9 all leaking, have you contacted DEQ about each --
 10 the enforcement aspect of these permits?
 11 **A Yes, they have toured my ranch and**
 12 **observed all of these things.**
 13 **Q** So do they have inspection reports --
 14 **A Yes.**
 15 **Q** -- on these instances when they have
 16 toured your ranch?
 17 **A Yes.**
 18 **Q** And did they come to the conclusion that
 19 the reservoirs were leaking?
 20 **A Yes.**
 21 **Q** The reservoirs on your land?
 22 **A Yes.**
 23 **Q** And there is no follow-up on that by
 24 DEQ?
 25 **A Not that I know of.**
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1 a minute, please, gentlemen?
 2 MR. SPARKS: No problem.
 3
 4 (Whereupon a discussion was held off the
 5 record, after which the proceedings continued as
 6 follows:)
 7
 8 MS. OCHS: Okay. I think I don't have
 9 anything further.
 10 MR. ESCH: I might have just one or two
 11 follow-up questions.
 12
 13 FURTHER EXAMINATION
 14
 15 QUESTIONS BY MR. ESCH:
 16 **Q** Mr. West, you said earlier that all of
 17 the reservoirs leak?
 18 **A Uh-huh.**
 19 **Q** And all of these permits -- and I'm
 20 speaking in general terms kind of paraphrasing
 21 what you said earlier. And please correct me if I
 22 mischaracterize your statements -- that all
 23 reservoirs leak and all of these reservoirs
 24 upstream are leaking and nobody is doing anything
 25 about it.
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1 **Q** Okay. And the reservoirs on your land,
 2 and that's what you are referring to. Do you know
 3 what companies those were so I can follow up on
 4 that?
 5 **A CMS, mainly, and Devon. Devon has been**
 6 **the biggest violator. Devon is immediately**
 7 **upstream from me.**
 8 **Q** Okay. If DEQ did follow up on these
 9 leaking reservoirs and fixed the problem, would
 10 that satisfy you?
 11 **A Well, yeah, if they could fix it; but**
 12 **they refused to do it. And it's really very**
 13 **difficult to do.**
 14 **Q** DEQ refused to fix the problem?
 15 **A Well, not DEQ but the methane companies.**
 16 **Q** Okay.
 17 **A They were the ones that were**
 18 **responsible.**
 19 **Q** Could you refer me to when you spoke
 20 with DEQ about these CMS and Devon?
 21 **A Well, there's inspection reports in**
 22 **here.**
 23 **Q** Oh, those are the reports that --
 24 **A Yeah.**
 25 **Q** Okay.
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1 **A The reports that I referred to**
 2 **Eisenhower and Wagner have both been out more than**
 3 **one time each.**

4 **Q** And you are referring to Mr. John
 5 Wagner, the administrator of the Water Quality
 6 Division?

7 **A Yes.**

8 **Q** And Jim Eisenhower?

9 **A Yes.**

10 **Q** Okay. And you asked that -- all you
 11 wanted was that DEQ would enforce the regulations?

12 **A Yes.**

13 **Q** And you don't feel that DEQ is enforcing
 14 the permits that are issued?

15 **A They haven't, no.**

16 **Q** Okay. I believe that's all I have for
 17 you, Mr. West. Thank you.

18 **A All right.**

19 MR. ESCH: All right. Off the record.
 20 MS. OCHS: Read and sign.

22 (Whereupon Deposition Proceedings
 23 were concluded at 2:06 p.m. on
 24 Wednesday, January 13th, 2010.)

25 (SIGNATURE REQUESTED.)
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DEPONENT'S CERTIFICATE

1
 2
 3
 4 I, WILLIAM F. WEST, do hereby certify that I
 5 have read the foregoing transcript of my testimony
 6 consisting of 45 pages taken on January 13th,
 7 2010, and that the same is a full, true and
 8 correct record of my deposition.
 9

10 _____
 11 WILLIAM F. WEST

12 () No changes () Changes attached
 13

14 Subscribed and sworn to before me this.

15 _____ day of _____, 2010.
 16

17
 18
 19 _____
 20 Notary Public

21
 22 My Commission Expires:
 23 October 13th, 2012
 24

25 O'BRYAN & O'BRYAN REPORTING SERVICE
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REPORTER'S CERTIFICATE

1
 2
 3 I, CAROL A. O'BRYAN, a Certified Court
 4 Reporter and a Notary Public of the State of
 5 Wyoming, do hereby certify that WILLIAM F. WEST
 6 was by me first duly sworn to testify to the
 7 truth, the whole truth, and nothing but the truth;
 8

9 That the foregoing transcript, consisting
 10 of 45 typewritten pages, is a true record of the
 11 testimony given by the said deponent, together
 12 with all other proceedings herein contained.
 13

14 IN WITNESS WHEREOF, I have hereunto set
 15 my hand and affixed my Notarial Seal this 28th day
 16 of January, 2010.
 17

18
 19 _____
 20 Carol A. O'Bryan
 21 Certified Court Reporter

22 My Commission Expires:
 23 October 13th, 2012
 24

25 O'BRYAN & O'BRYAN REPORTING SERVICE
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SIGNATURE PAGE

1
 2 I, WILLIAM F. WEST, the aforementioned
 3 witness, have read my deposition transcript; and
 4 have made the following corrections:
 5

6 REASONS 1-- Clarify the Record
 7 FOR CHANGES: 2-- Conform to Facts
 8 3-- Correct transcription error

9 Use 1, 2, 3

10 Correction As Reason for

11 Page Line (Change from) (Change to) Change
 12 _____
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____

19 _____
 20 WILLIAM F. WEST

21 SUBSCRIBED AND SWORN TO before me this

22 ____ day of _____, 2010 by _____.

23 _____
 24 Notary Public

25 My Commission Expires: _____

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1 CAROL A. O'BRYAN, CCR
 2 6 Cottonwood Drive
 3 Sheridan, Wyoming 82801
 307-672-3354 307-751-6823 (cell)
 3 carolobryan@bresnan.net

4 William F. West
 5 628 SA Road
 6 Arvada, WY 82831

Date: 1-30-10

7 -----

8 Re: DEQ - PRBRC

9 Dear Bill,

10 I am enclosing the original of the transcript
 11 of your deposition in the above-entitled matter
 for your convenience in reading and signing your
 12 deposition.

13 I would appreciate if you could read your
 14 depo, return the original deposition with the
 signature pages attached to Mr. Esch, who took
 your deposition, within the next 30 days so the
 original may be prepared for delivery and use in
 15 the court case in this matter. Please return the
original depo in the addressed envelope I'm
 16 enclosing for your convenience in returning it.

17 The necessary pages -- which are marked with
 tabs so you can easily find where to sign -- are
 18 at the back of your deposition. Please do not
mark on the face of the deposition, but use the
 19 attached forms, if necessary, to make corrections.

20 Please remember that you must sign before a
 21 Notary Public, so please indicate the corrections
 as you read but do not sign until you are before
 the notary.

22 Very truly yours,

23
 24 Carol A. O'Bryan
 25 Certified Court Reporter

Enc.

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Exhibit 3

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Docket Number: 09-3807

IN THE MATTER OF THE)
APPEAL OF POWDER RIVER)
BASIN RESOURCE COUNCIL,)
AND WILLIAM F. WEST)
RANCH, LLC, FROM WYPDES)
PERMIT NO. WY0094056)

DEPOSITION OF JILL MORRISON

Taken on behalf of the Wyoming DEQ

9:06 a.m., Wednesday
January 13th, 2010

PURSUANT TO AGREEMENT, the Deposition of
JILL MORRISON was taken in accordance with the
applicable Rules of Civil Procedure in the Offices
of Davis & Cannon, 40 North Main Street, Sheridan,
Wyoming, before Carol A. O'Bryan, Certified Court
Reporter, and a Notary Public in and for the State
of Wyoming.

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EXHIBIT INDEX
MARKED FOR
IDENTIFICATION

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6	
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A P P E A R A N C E S

For the Wests: DAVIS & CANNON, LLP
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40 North Main Street
Sheridan, WY 82801

By: Alison Ochs, Esq.

For the DEQ: WYOMING AG'S OFFICE
Attorneys at Law
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Cheyenne, WY 82002

By: Luke Esch, Esq.

For Stephens Energy BEATTY & WOZNAK, PC
Company: 216 Sixteenth Street
Suite 1100
Denver, CO 80202-5115

By: William Sparks, Esq.
Drake Hill, Esq.
(Appearing via telephone)

I N D E X

Page

DEPOSITION OF JILL MORRISON:

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P R O C E E D I N G S

JILL MORRISON,

having been first duly sworn to tell the
truth, testified as follows:

EXAMINATION

QUESTIONS BY MR. ESCH:

Q Good morning, Ms. Morrison.

A Good morning.

Q My name is Luke Esch. I'm representing
the Wyoming Department of Environmental Quality in
this matter.

And I would like to start by, could you
identify yourself for the record, please?

A Yes. I'm Jill Morrison.

Q And what organization are you with?

A I'm with Powder River Basin Resource
Council.

Q What is your position at Powder River
Basin Resource Council?

A I'm a rural community organizer.

Q And if I may, I will refer to it as

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1 PRBRC and that will just mean Powder River Basin
 2 Resource Council for shorthand. That will make it
 3 simple for all of us.
 4 What are your duties? What's your
 5 position at PRBRC?
 6 **A My duties primarily are to work with**
 7 **landowners and individuals impacted by energy**
 8 **development; and a lot of what I do is help people**
 9 **understand the regulatory processes in the state**
 10 **and Federal government, how they can participate**
 11 **in that process, how they can participate in the**
 12 **Democratic process on permitting that takes place**
 13 **on their property, helping people come together**
 14 **who are neighbors in order to try to minimize**
 15 **impacts, helping people maybe attend meetings or**
 16 **know about relevant meetings. What else? I don't**
 17 **know, that's primarily what I do.**
 18 **Q** Tell me a little bit about PRBRC and
 19 their mission goals.
 20 **A The organization was formed in 1973 by**
 21 **ranchers and concerned citizens, at that time**
 22 **primarily over coal strip mining and in response**
 23 **to coal strip mining. The organization was formed**
 24 **to ensure that coal mining would be done in a**
 25 **manner that would not be detrimental to ranching,**

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1 **to air, to water, to land.**
 2 **The organization's mission and purpose**
 3 **is really for the responsible development of our**
 4 **important resources in the state, to sustain**
 5 **present and future generations and for the**
 6 **education and empowerment of citizens to**
 7 **participate in their government.**
 8 **Q** How many members does PRBRC have in
 9 Wyoming?
 10 **A In Wyoming we have about, oh, close to a**
 11 **thousand.**
 12 **Q** Is it just Wyoming or does PRBRC have
 13 members outside of Wyoming?
 14 **A Most of our membership is within**
 15 **Wyoming. We have a few members outside of Wyoming**
 16 **who maybe own property here or once lived here or**
 17 **have relatives here, folks like that.**
 18 **Q** Does PRBRC have members within the
 19 Spotted Horse Creek drainage?
 20 **A Yes, we do.**
 21 **Q** And who are they?
 22 **A Well, Bill and Marge West and Sorensens,**
 23 **Spellmans, PG Ranch. There may be some others,**
 24 **but that's -- Rogers are in that area. I may be**
 25 **able to think of a few others. But, yeah, we've**

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1 **got quite a few members out in the Spotted Horse**
 2 **drainage area.**
 3 **Q** Okay. So you mentioned that you are
 4 involved in energy development activities in
 5 Wyoming. Can you describe those activities a
 6 little bit further for me?
 7 **A Well, coal mining. And I don't work as**
 8 **much on that issue anymore. I have another**
 9 **colleague that does. Most of my work is focused**
 10 **on coalbed methane development and the impacts of**
 11 **coalbed methane development in terms of drilling,**
 12 **water production, road-building, compressor**
 13 **stations, all the sort of infrastructure that**
 14 **supports the development. And so we're working**
 15 **with folks dealing with impacts of all of that**
 16 **development.**
 17 **Q** Is it fair to say that PRBRC is opposed
 18 to CBM development?
 19 **A Not at all.**
 20 **Q** Are there certain operators that PRBRC
 21 approves of in their CBM activities?
 22 **A We approve of any operator that is doing**
 23 **development in a responsible, careful and**
 24 **respectful manner.**
 25 **Q** When you say "responsible and careful

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1 manner," can you describe what you mean?
 2 **A One that works in conjunction with the**
 3 **landowner as a partner in placement of the**
 4 **infrastructure, how the drilling proceeds, works**
 5 **with them in terms of how the water will be**
 6 **managed, considers the entire water shed**
 7 **downstream, since that's where a lot of the impact**
 8 **go since water runs downhill.**
 9 **So I think development that minimizes**
 10 **the footprints and, again, you know, works in**
 11 **conjunction with the landowners.**
 12 **Q** Now, did you mention water management?
 13 **A Yes.**
 14 **Q** What sort of activities would that
 15 entail, water management?
 16 **A Well, I know you are familiar that**
 17 **coalbed methane development requires the pumping**
 18 **of enormous quantities of water in order to get**
 19 **the gas to release, to come up through the well**
 20 **bore and put in the pipeline.**
 21 **They have to pump off cumulatively right**
 22 **now, I think it's been in the range of 70,000**
 23 **acre-feet a year, between 60 and 70,000 acre-feet**
 24 **a year. It's been around a million barrels of**
 25 **water a day, so a large volume of water.**

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1 And the problem with that water
 2 management is that industry has often chosen the
 3 cheapest, easiest way to get rid of the water,
 4 which is to just dump it down the drainage. And
 5 they get permits from DEQ to do that, and that's
 6 created a lot of problems for downstream
 7 landowners.

8 **Q** Okay.

9 **A So what we try to do is work with the**
 10 **state and the Federal government in terms of**
 11 **better management of that resource rather than**
 12 **wasting it and dumping it, because it is a very**
 13 **valuable resource and people are losing their**
 14 **groundwater resources.**

15 **Q** Okay. All right. I'm going to hand you
 16 this notice of deposition. Have you seen that
 17 before today?

18 **A Yep.**

19 **Q** And did you bring to the deposition such
 20 materials as you may need to refer to for
 21 discussing the answers to the interrogatories?

22 **A Yes.**

23 **Q** I would like to mark that Deposition
 24 Exhibit 1.

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1 **harms are their harms, basically.**

2 **Q** But the permit limits you are not
 3 opposed to. You are opposed to the way the permit
 4 limits are set; is that correct?

5 **A Well, the permit limits themselves can**
 6 **be damaging because they are not set by a method**
 7 **that ensures they are protective. There is not**
 8 **even -- I guess we are opposed to the permit**
 9 **limits because there isn't even an SAR limit.**

10 **Q** Are you aware of what the permit limits
 11 are?

12 **A Yes.**

13 **Q** What are they?

14 **A The EC is set at 26-something. I don't**
 15 **remember exactly off the top of my head.**

16 **Q** 2680 possibly?

17 **A That sounds about right.**

18 **Q** And you said there is no SAR limit on
 19 this permit, as well; is that correct?

20 **A Yeah. There's an irrigation monitoring**
 21 **point, where there's an SAR limit that uses a**
 22 **calculation; but the problem with the limits**
 23 **themselves is it's set with a scientifically**
 24 **invalid methodology.**

25 **And then there's the overall issue of**
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1 (Whereupon the document referred to by
 2 counsel was marked for identification as
 3 Deposition Exhibit 1, after which the proceedings
 4 continued as follows:)

6 **Q** (By Mr. Esch) Okay. Can you describe
 7 for me why PRBRC is opposed to the issuance of
 8 Wyoming discharge permit 0094056?

9 **A Because the permit utilized a scientific**
 10 **methodology referred to as Tier 2 by DEQ, which**
 11 **has been determined to be scientifically invalid**
 12 **by several experts.**

13 **Q** And that's the only reason you are
 14 opposed to this permit?

15 **A That's right.**

16 **Q** So it's the way the limits were set, not
 17 the limits in the permit?

18 **A Right.**

19 **Q** So how was PRBRC harmed by the issuance
 20 of this permit?

21 **A Well, our members who are downstream**
 22 **from this permit, we work with those folks; and**
 23 **since they are members of our organization, we're**
 24 **working with them in terms of trying to get better**
 25 **water management overall and specifically. So our**

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1 **the cumulative volume of water from all of the**
 2 **permits in that water shed, and DEQ isn't looking**
 3 **at that issue.**

4 **And we know from the water samples we've**
 5 **taken on the West Ranch, that the EC is 8,000.**
 6 **And so there's the problem that Buchanan and**
 7 **Hendrickx pointed out, of high salinity -- the**
 8 **high salinity that comes down from all of these**
 9 **discharges upstream and the water -- the buildup**
 10 **of salinities in the soil and the water-logging**
 11 **issues.**

12 **Q** But these permits right here that we are
 13 discussing, the contested permit, you are aware
 14 that there's containment requirements in these
 15 permits?

16 **A But there aren't containment**
 17 **requirements totally because they can use what's**
 18 **referred to as assimilative capacity credits and**
 19 **discharge this water.**

20 **Q** But in normal, dry condition operations,
 21 there is a containment?

22 **A None of these reservoirs contain water**
 23 **because they all seep and leak, unless they are**
 24 **lined; and these reservoirs are not lined. If**
 25 **these reservoirs were lined, we probably would not**

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13

1 **have objected to this permit.**

2 **Q** You said these reservoirs seep and leak.

3 What evidence do you have that these reservoirs
4 seep and leak?

5 **A Every single reservoir seeps and leaks,
6 every single reservoir, unless it's lined. And
7 even lined reservoirs can have problems. Because
8 I've seen it with my own eyes on, you know, many
9 CBM reservoirs and experience on our own ranch
10 with just stock reservoirs. They seep and leak.**

11 **That's what unlined reservoirs do.**

12 **Q** Have you visited these reservoirs in
13 this specific department?

14 **A No.**

15 **Q** So you have no evidence that these
16 reservoirs would indeed seep or leak; is that
17 correct?

18 **A I have basic knowledge that unlined
19 reservoirs seep and leak. I've never seen one
20 that didn't.**

21 **Q** Do you have any --

22 **A In fact, the BLM bases their whole
23 analysis on infiltration and leaking of reservoirs
24 in order to get rid of the CBM water in
25 reservoirs.**

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15

1 the middle of the page.

2 And we'll see Permit Number 0094056.

3 Would you agree that these are the comments that
4 PRBRC submitted to DEQ in regard to this permit?

5 **A Yes.**

6 **Q** So isn't it true that based on these
7 comments, PRBRC did not mention anything about the
8 reservoirs leaking?

9 **A That's right.**

10 **Q** Isn't it true that PRBRC also did not
11 mention anything about the limits of this permit?

12 **A Right. But just because we didn't
13 mention in this doesn't mean we're barred from
14 bringing it up later.**

15 **Q** I understand that. Isn't it also true
16 that PRBRC didn't mention anything about the
17 scientific approach that DEQ used in issuing these
18 permits?

19 **A Not in these comments, but in others we
20 have.**

21 **Q** So if PRBRC was concerned about the
22 leaking of these reservoirs, why didn't they use
23 the opportunity to respond to this permit during
24 the comment period?

25 **A I don't know. Because we can do it at a
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14

1 **Q** Do you have any specific information
2 about these reservoirs in particular, that they
3 leak?

4 **A No.**

5 **Q** Okay. So you mentioned that if these
6 reservoirs were lined, then PRBRC might not be
7 challenging this permit; is that correct?

8 **A That's correct. As long as they were
9 lined, and you are going to contain the water, you
10 are not going to discharge it under assimilative
11 capacity credits; but that's not the way the
12 permit is written right now.**

13 **Q** Did you make this concern -- did you
14 express your concern about the lining of the
15 reservoirs to DEQ prior to the issuance of this
16 permit?

17 **A I don't believe so.**

18 **Q** Did you comment on this permit?

19 **A Yes, we did.**

20 **Q** Do you recall what those comments
21 stated?

22 **A Not off the top of my head.**

23 **Q** Now, what I'm putting in front of you is
24 Powder River Basin Resource Council's comments to
25 a number of permits, and I'll refer you to Page 5,

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1 **later time.**

2 **Q** To hijack the permitting process?

3 **A No, because that's our right.**

4 **Q** Well, doesn't it put DEQ in a position
5 where they are not able to respond to your
6 comments since you didn't submit to them during
7 the comment period?

8 **A I don't know.**

9 **Q** Did PRBRC assist in providing answers to
10 DEQ's first discovery request?

11 **A Yes, we did.**

12 MS. OCHS: Can we take a quick break?

13 MR. ESCH: Sure. Off the record.

14

15 (Whereupon a break was taken, after
16 which the proceedings continued as follows:)

17

18 MR. ESCH: Kind of a housekeeping
19 matter. I'd like to go ahead and mark this PRBRC
20 comments as Deposition Exhibit 2.

21

22 (Whereupon the document referred to by
23 counsel was marked for identification as

24 Deposition Exhibit 2, after which the proceedings
25 continued as follows:)

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17

19

1
2 **Q** (By Mr. Esch) Also, before we left, I
3 asked you if you assisted in providing answers to
4 DEQ's first discovery request; and you had
5 responded that you had. So I'd like to refer to
6 the discovery or responses to the discovery
7 request. Which questions did you assist in
8 providing responses?
9 MS. OCHS: Feel free to take your
10 time.
11 **Q** (By Mr. Esch) Yes.
12 **A Well, I know I reviewed them all. And**
13 **when you say "assist," you mean I did something**
14 **specific or maybe I assisted with them all. I**
15 **don't know what your --**
16 **Q** Well, did you provide information in
17 these that -- did you provide any answers to these
18 questions?
19 **A Yes.**
20 **Q** And which questions are those?
21 **A Well, let's see. Probably --**
22 **Q** And when I say "you" I mean personally.
23 **A Probably most of them.**
24 **Q** Most of them?
25 **A Yeah.**

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1 MS. OCHS: Just give me a minute.
2 THE WITNESS: Let me see if I have
3 those. We weren't even looking at the same
4 document.
5 MS. OCHS: Can we go off the record
6 for a second?
7 Sorry guys, I just spilled a little
8 coffee.
9
10 (Whereupon a discussion was held off the
11 record, after which the proceedings continued as
12 follows:)
13
14 **Q** (By Mr. Esch) Back on.
15 I'd like to clarify. My questions were
16 regarding Interrogatory 12 of Petitioners'
17 Responses to Wyoming Department of Environmental
18 Qualities First Discovery Request.
19 The general question was whether you had
20 assisted in providing information to DEQ's
21 discovery request.
22 And I believe there was a
23 misunderstanding, and you thought that I meant
24 Stephens Energy's discovery request.
25 **A Yeah.**

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18

20

1 **Q** Does that include Number 11? Or excuse
2 me, 12?
3 **A Yes.**
4 **Q** But your name is not included in this
5 response to Number 12, is it?
6 **A You mean "Petitioners are without**
7 **knowledge as to whether DEQ has ever found**
8 **Stephens to be in violation of the permit"?**
9 **Q** Number 12: "Please identify each
10 individual who provided information or opinions
11 used or relied upon..." --
12 MS. OCHS: Excuse me. Are you on the
13 interrogatories?
14 MR. ESCH: I am on the interrogatories.
15 MS. OCHS: Let us get there.
16 THE WITNESS: Okay. I was just looking
17 at the --
18 MR. ESCH: Excuse me. That was my
19 fault. I didn't mean to confuse you.
20 MS. OCHS: Do you have a page number?
21 MR. ESCH: 10.
22 No, this is DEQ's discovery request,
23 which was referenced in the notice of deposition.
24 Do we want to take a break and clean
25 that up?

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1 **Q** So based on that clarification, did you
2 provide information to DEQ's discovery request?
3 **A Yes. I did review it, yes.**
4 **Q** Did you --
5 **A And pulled out some old reports and**
6 **things, yes.**
7 **Q** So you did provide information?
8 **A Right.**
9 **Q** But your name is not listed on the DEQ's
10 Number 12 interrogatory asking about who provided
11 information?
12 **A Right.**
13 **Q** Okay. And could you describe for me a
14 little bit more of the reports that you cited or
15 the information that you did provide?
16 **A I provided this water sample, and a lot**
17 **of the inspection reports that have occurred over**
18 **the years from downstream discharge issues.**
19 **Q** All right. So about this water
20 sample -- and this, by water sample, what you are
21 referring to is attachment 2 to Petitioners
22 response to DEQ's first discovery request,
23 correct?
24 **A Right. Right.**
25 **Q** Okay. Let's talk about this a minute.

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1 Tell me about these measurements that you took.
 2 Did you take the sample yourself personally?
 3 **A No, I was there. Bill West took the**
 4 **sample.**
 5 **Q** Bill took the sample?
 6 **A Yes.**
 7 **Q** Okay. Would it be better if I ask him
 8 about the circumstances of the sample?
 9 **A It doesn't matter. I was there.**
 10 **Q** So when were these taken?
 11 **A These were taken in May. May 21st.**
 12 **Q** Tell me about the location where you
 13 took this sample. Where was it taken?
 14 **A It was taken right out of Spotted Horse**
 15 **Creek on their property, oh, just where the water**
 16 **flows right through those meadows.**
 17 **Q** "Those meadows," which meadows?
 18 **A Their bottom-land meadows.**
 19 **Q** Okay. Was the sampling location in
 20 close proximity to any CBM discharges?
 21 **A No. It's downstream.**
 22 **Q** How far, approximately.
 23 **A A few miles. Bill would know better.**
 24 **He probably knows better the closest CBM discharge**
 25 **point upstream, but this is in those bottom-land**

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1 **meadows that have been impacted by CBM discharges.**
 2 **And this is where we normally take samples.**
 3 **Q** Well, I understand that. I'm just
 4 trying to -- I've never been to the property, so
 5 I'm just trying to get an understanding of the
 6 circumstances behind the sampling.
 7 So you said there was CBM discharges
 8 upstream, correct?
 9 **A Uh-huh.**
 10 **Q** Do you know which operators are
 11 upstream?
 12 **A Devon; this company, Stephens, I guess;**
 13 **Cedar Ridge; Yates. I don't know who else.**
 14 **Q** And are you aware of the circumstances
 15 behind those discharges, the effluent limits,
 16 any --
 17 **A I'm aware.**
 18 MS. OCHS: Why don't you let him finish.
 19 THE WITNESS: Yeah.
 20 **Q** (By Mr. Esch) Oh, these effluent
 21 limits, are any of those discharges that you are
 22 referring to?
 23 **A I'm aware of some of them, yes. And I'm**
 24 **aware that they have been changing as a result of**
 25 **this invalid scientific methodology, this**

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23

1 **Section 20, that was employed by DEQ, they have**
 2 **been increasing.**
 3 **Q** All of the permits have been changing?
 4 **A I don't know about all of them.**
 5 **Q** Well, let's just refer to Stephens,
 6 since we are discussing the Stephens permits. Are
 7 you aware of the effluent limits of the Stephens
 8 Energy permits?
 9 **A Yes.**
 10 **Q** What are they?
 11 **A The proposed -- in this permit that we**
 12 **just talked about?**
 13 **Q** Well, you said that there's operators
 14 upstream that are discharging into Spotted Horse
 15 Creek, correct?
 16 **A Right.**
 17 **Q** And I asked you if you were aware of any
 18 of the effluent limits from those operators; and
 19 you said yes, correct?
 20 **A Uh-huh.**
 21 **Q** And I was asking you if you could give
 22 me those effluent limits from the Stephens Energy
 23 operators.
 24 **A No. What I'm mostly aware of is there**
 25 **was an irrigation compliance point right on the**

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24

1 **West Ranch that was an SAR 6 and an EC of 2,000.**
 2 **That was in many of the permits we**
 3 **looked at, and DEQ has removed that.**
 4 **And that -- because industry could never**
 5 **need that, they were continually exceeding that**
 6 **compliance point in their permits.**
 7 **And that's talked about in some of these**
 8 **inspection reports. But the compliance point was**
 9 **a 6, SAR 6 and EC of 2,000 which was to try to**
 10 **protect those irrigated meadows.**
 11 **Q** But that was not Stephens Energy,
 12 correct?
 13 **A I don't know.**
 14 **Q** Okay. So upstream -- hypothetical --
 15 upstream, one operator, not Stephens just a
 16 hypothetical company -- is discharging an EC of
 17 1,000 and SAR of 5, would PRBRC be opposed to
 18 that?
 19 MS. OCHS: I'm going to object as to the
 20 relevance of a hypothetical, but go ahead and
 21 answer.
 22 **A Probably not, but if it uses the Tier 2**
 23 **methodology, we probably would. We've objected to**
 24 **DEQ's use of this scientifically-invalid**
 25 **methodology.**

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1 **And the point is they have used a**
 2 **scientifically invalid methodology to set permit**
 3 **limits, that Hendrickx and Buchanan have stated in**
 4 **their reports is not protective and is going to**
 5 **lead to a measurable decrease in crop production.**

6 **Q** (By Mr. Esch) I understand. Like we
 7 discussed earlier, it's not the limits that you
 8 are objecting to, it's how they were proposed?

9 **A And that they are not protected.**

10 **Q** How do we know they are not protected?

11 **A Because Hendrickx and Buchanan say so.**

12 **Q** Because they say so in the report that
 13 these specific limits are not protected?

14 **A Yeah, because they say that Tier 2**
 15 **methodology doesn't set up protective limits.**

16 **Q** Well, let's take a look and see what it
 17 says there. Which report are you referring to?

18 **A Let's see. Page 11 of -- "Based on**
 19 **the current scientific analysis we conclude that**
 20 **the Tier 2 --**

21 **Q** And if you would, would you refer me to
 22 which report you are referring to here. The May
 23 or -- oh, it's just May. Okay. Sorry. Page 11?

24 **A No. No, it's not the May one. It's the**
 25 **September one. But I think the May one says it**

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1 **current scientific analysis, we conclude that the**
 2 **Tier 2 methodology can cause degradation of the**
 3 **receiving water to such an extent to cause a**
 4 **considerable, measurable decrease in crop**
 5 **production."**

6 **Q** Okay. I understand that. So where in
 7 this report does it refer -- does it say that EC
 8 of 2680 is not protected?

9 **A It doesn't say that, it says the**
 10 **methodology used to come up with that is going to**
 11 **cause -- is not scientifically valid; and it's**
 12 **going to come up with a problem downstream.**

13 **Q** Doesn't it say it "can"? "Can cause
 14 degradation of the receiving waters"? I don't
 15 necessarily see a "will" in that statement. Am I
 16 wrong there?

17 **A Nope. It says it "can cause."**

18 **Q** Okay. So, once again, it's not so much
 19 the limits that you are objecting to; it's how the
 20 limits were proposed or developed; is that
 21 correct?

22 MS. OCHS: Objection to asked and
 23 answered.

24 You can go ahead and answer.

25 **A That's right.**

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28

1 **also.**

2 MR. HILL: For the record, could we ask
 3 for identification of the report by date and
 4 author and date of report.

5 **A Expert scientific opinion out of the**
 6 **Tier 2 methodology report to the Wyoming**
 7 **Department of Environmental Quality, Jan M. H.**
 8 **Hendrickx -- with an X on the end --**
 9 **H-E-N-D-R-I-C-K-X. And Bruce A. Buchanan.**
 10 **September 2009. Jan, J-A-N.**

11 MS. OCHS: Who was speaking on the other
 12 end?

13 MR. HILL: That was Drake Hill.

14 MS. OCHS: Thank you, Drake.

15 **A Page 11, "We repeat our previous**
 16 **findings and opinion that the Tier 2 methodology,**
 17 **as set forth in Appendix H, Section CVIB, is not**
 18 **reasonable nor scientifically valid for**
 19 **determining the EC of water that can be discharged**
 20 **into an ephemeral drainage in Wyoming so that**
 21 **degradation of the receiving water will not be of**
 22 **such an extent to cause immeasurable decrease in**
 23 **crop production. Hendrickx and Buchanan 2009."**

24 **Q** (By Mr. Esch) Okay, so --

25 **A And then it goes on. "Based on the**

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1 **Q** Okay.

2 **A That's right. And they are above the**
 3 **compliance point established at 2000.**

4 **Q** (By Mr. Esch) The compliance?

5 **A And there is no SAR protective limits.**
 6 **So I think we object to the methodology; but, you**
 7 **know, it's probably going to be a better question**
 8 **for the expert.**

9 **Q** Well, you are objecting to this permit,
 10 correct?

11 **A That's right. And we're objecting to**
 12 **the permit based on the invalid scientific**
 13 **methodology used. And we don't believe it**
 14 **establishes protective limits based on that**
 15 **methodology. There is no SAR limit.**

16 **Q** Inside the permit there's a condition
 17 that would require an automatic SAR limit if there
 18 is an exceeding IMP; is that correct?

19 **A No.**

20 **Q** That's not correct?

21 **A No.**

22 **Q** There's not an automatic reopening for
 23 the permit --

24 **A No.**

25 **Q** -- If the SAR exceeds a formula of -- if

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1 SAR is less than 6.67 times EC minus 3.33?
 2 **A No, it doesn't automatically reopen it.**
 3 **It has to exceed it a whole series of numbers of**
 4 **times.**
 5 **Q** Yes, but it would --
 6 **A So it doesn't have to exceed it once.**
 7 **And that SAR limit is rather high.**
 8 **Q** Are you an expert in SAR?
 9 **A No, but I'm an expert in reading other**
 10 **experts.**
 11 **Q** And you are referring to Mr. Buchanan
 12 and Mr. Hendrickx?
 13 **A Well, Buchanan, Hendrickx, Munn, Paige,**
 14 **Ires, Westcott, Hanson. I mean, most of them say**
 15 **anything over 6 is starting to give you problems.**
 16 **The USDA salinity lab said they wouldn't**
 17 **go over 5.**
 18 **Q** Well, which salinity lab are you
 19 referring to?
 20 **A The one in Riverside.**
 21 **Q** The one in Riverside?
 22 **A Yeah. And there was a report done for**
 23 **EPA that made that case. We've provided that to**
 24 **DEQ.**
 25 **Q** Okay.

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1 **that has been --**
 2 **Q** Yes.
 3 **A -- said to be scientifically invalid.**
 4 **Q** (By Mr. Esch) Yes. Yes.
 5 **A I think we would object to it based on**
 6 **using a scientifically-invalid methodology that**
 7 **says it does not protect the downstream**
 8 **irrigation.**
 9 **Q** It "may" not protect; is that correct?
 10 **A Well, actually I don't think it -- it**
 11 **doesn't always says "may."**
 12 **Q** It says "can."
 13 **A And I was just reading back through**
 14 **this. In the May 2009 report they say that the**
 15 **Tier 2 methodology --**
 16 **Q** Excuse me. What page are you on?
 17 **A Page 3, little i. "The Tier 2**
 18 **methodology, as set forth in Appendix H, Section**
 19 **CVIB, is not reasonable nor scientifically valid**
 20 **for determining the EC and SAR of water, can be**
 21 **discharged into an ephemeral drainage in Wyoming**
 22 **so that degradation of the receiving water will**
 23 **not be of such an extent to cause immeasurable**
 24 **decrease in crop production."**
 25 **And they repeat that several times**

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1 MR. ESCH: Now, if we could take five
 2 minutes, let me go through my notes, we might be
 3 close to finishing up. Can we break for five?
 4 MS. OCHS: That's fine with me.
 5 MR. HILL: Sounds good with us. Thank
 6 you.
 7
 8 (Whereupon a break was taken, after
 9 which the proceedings continued as follows:)
 10
 11 MR. ESCH: I'm ready. We should be able
 12 to wrap this up shortly.
 13 **Q** Back on the record.
 14 All right, Ms. Morrison, I should be
 15 able to finish up fairly shortly. I would just
 16 like to do a little hypothetical with you.
 17 Let's assume that the Wests won't be
 18 injured by this permit, and let's just assume that
 19 the water discharge in the reservoirs will be
 20 contained and only discharged during rain events.
 21 Would PRBRC still be contesting this permit?
 22 MS. OCHS: I'll object on the record to
 23 relevance.
 24 But go ahead and answer.
 25 **A Is DEQ using the same Tier 2 methodology**

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1 **throughout these reports. And they also say on**
 2 **that same page. "No evidence has been found in**
 3 **the peer-reviewed literature in support of the**
 4 **assumption on which Tier 2 is based."**
 5 **Q** I understand that. And I understand
 6 that you are relying heavily on these reports.
 7 But the sections you keep discussing, it says,
 8 "...to determine the EC of the water that can be
 9 discharged." So I understand that you're relying
 10 heavily on those.
 11 So moving on past that, If this proceeds
 12 to hearing, what do you anticipate to testify to
 13 at the hearing?
 14 **A I don't know.**
 15 **Q** You don't know? Will you testify to the
 16 protectiveness of the limits?
 17 **A I think I would testify to the problems**
 18 **and concerns we've had about DEQ's failure to**
 19 **adhere to the Wyoming water quality standards,**
 20 **their failure to issue permits that are protective**
 21 **of downstream landowners, their failure to use a**
 22 **scientifically-valid methodology in establishing**
 23 **protective limits that meet the requirements to**
 24 **protect current and existing uses under the water**
 25 **quality rules and regs and the Clean Water Act.**

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1 **Q** In general?
 2 **A** **Right.**
 3 **Q** So statewide?
 4 **A** **Well, no. Specific to the Powder River**
 5 **Basin permits that we're familiar with.**
 6 **Q** And are you involved in the task force
 7 to develop the new rules?
 8 **A** **No, I'm not. I sat in for -- several of**
 9 **our landowner members are. And one of our staff**
 10 **and I sat in for her this last week because she**
 11 **was ill.**
 12 **Q** Is PRBRC involved?
 13 **A** **Yes, we are.**
 14 **Q** So at a statewide level to develop
 15 permit limits that are acceptable to PRBRC, PRBRC
 16 is involved in that?
 17 **A** **It's not the statewide level that's**
 18 **working -- are you talking about the coalbed**
 19 **methane working groups?**
 20 **Q** Yes, the coalbed methane working groups.
 21 **A** **That's specific to the Powder River**
 22 **Basin.**
 23 **Q** Okay. So any limit that was established
 24 under that coalbed methane working group would not
 25 be applied statewide?

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1 **A** **I reviewed the discovery responses and**
 2 **the Buchanan and Hendrickx reports and the**
 3 **Stephens permits, and I spoke with Kate Fox and**
 4 **Alison Ochs.**
 5 **Q** What exactly did you discuss with
 6 Ms. Fox and Ms. Ochs?
 7 MS. OCHS: Objection to attorney/client
 8 privilege.
 9 **Q** (By Mr. Sparks) Did you confer with any
 10 experts including Dr. Paige in preparation of this
 11 deposition?
 12 **A** **No, I did not.**
 13 **Q** But you did review the permit WY 94056?
 14 **A** **Yes, I did.**
 15 MR. SPARKS: I want you to mark this as
 16 Deposition Exhibit 3.
 17
 18 (Whereupon the document referred to by
 19 counsel was marked for identification as
 20 Deposition Exhibit 3, after which the proceedings
 21 continued as follows:)
 22
 23 **Q** (By Mr. Sparks) And I would like you to
 24 turn to Page 1. And I would like you to explain
 25 to me what you mean by assimilative capacity

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1 **A** **The working groups specific to the**
 2 **Powder River Basin.**
 3 **Q** But the regulation is not, correct?
 4 **A** **I don't know.**
 5 **Q** You don't know? Okay. Fair enough. I
 6 think that's all I have. Thank you.
 7 **A** **Thank you.**
 8 MR. ESCH: Bill? Drake? Do you guys
 9 need a minute to prepare or --
 10
 11 (Whereupon a discussion was held off the
 12 record, after which the proceedings continued as
 13 follows:)
 14
 15 EXAMINATION
 16
 17 QUESTIONS BY MR. SPARKS:
 18 **Q** Hi, Ms. Morrison. My name is Bill
 19 Sparks. I'm with Stephens Energy. I'll try not
 20 to be too repetitive and try to get this done as
 21 soon as possible, but I have a couple of follow-up
 22 questions after Luke.
 23 First, how did you prepare for this
 24 deposition? And in that regard, what documents
 25 did you review; and who did you speak with?

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1 credits in regards to authorization of discharges
 2 from these three impoundments. It's on Page 1 at
 3 the bottom under the statement of basis.
 4 **A** **Well, it says "The permittee is required**
 5 **to contain all effluent from the outfalls in the**
 6 **on-channels reservoirs at this facility unless**
 7 **prior written authorization is granted by the**
 8 **WYPDES program for a reservoir release, in**
 9 **association with the use of assimilative capacity**
 10 **credits for the Powder River..."**
 11 Now, I am familiar with the assimilative
 12 capacity credit policy DEQ has. And I am familiar
 13 with looking at other permits that specifically
 14 list thousands to millions of pounds of sodium
 15 that are permitted to be discharged under a permit
 16 each month.
 17 **Q** To your knowledge, has this
 18 authorization ever been given for this permit?
 19 **A** **Well, this is a new permit, so I'm not**
 20 **-- to my knowledge, I don't know that; but it**
 21 **permits -- I mean, how would we know? How would**
 22 **we know whether DEQ is authorizing assimilative**
 23 **capacity credits? It's not listed in the permit.**
 24 **Q** Okay. So, to your knowledge, DEQ has
 25 never authorized this type of discharge?

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1 **A Oh, yes, they have authorized**
 2 **assimilative capacity credit discharges.**
 3 **Q** I'll rephrase.
 4 To your knowledge, DEQ has never
 5 authorized a discharge for this specific permit,
 6 94056?
 7 **A To my knowledge, I don't know whether**
 8 **they have or haven't. I know that they have the**
 9 **right to.**
 10 **Q** To your knowledge, has there ever been
 11 an intentional discharge from one of the three
 12 impoundments authorized by this permit?
 13 **A I don't know. Not to my knowledge.**
 14 **Q** Are you aware that these three
 15 impoundments were first authorized under WYPDES
 16 permits in 2001 and 2002?
 17 **A I am aware of that from the responses in**
 18 **one of the discovery requests, yes.**
 19 **Q** In 2001 and 2002 when discharges were
 20 authorized under those previous permits, as Powder
 21 River Basin Resource Council, were you aware of
 22 those permits?
 23 **A No.**
 24 **Q** When did you become aware of the
 25 impoundment associated with this permit?
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1 **A Do you have to have written approval to**
 2 **discharge in a storm event?**
 3 **Q** Look at Page 2 of the Statement of
 4 Basis, the first, the very top.
 5 **A Yeah, it says, "Discharge from the**
 6 **reservoir or reservoirs is limited by the permit**
 7 **to natural overtopping and shall not extend beyond**
 8 **a 48-period following commencement of natural**
 9 **overtopping."**
 10 So it sounds to me like you can
 11 discharge for 48 hours during a storm event, and
 12 you don't have to have written approval for that.
 13 **Q** To your knowledge, has that occurred?
 14 To your knowledge, has this natural overtopping
 15 ever occurred regarding these three impoundments?
 16 **A Well, I know that natural overtopping**
 17 **has occurred in many of the reservoirs on Spotted**
 18 **Horse Creek.**
 19 **I wouldn't say I'm aware specifically on**
 20 **these ones, but I've certainly flown over that**
 21 **area after storm events and seen many reservoirs**
 22 **overtopping.**
 23 **Q** But, to your specific knowledge, you
 24 have no specific knowledge as to whether or not
 25 these three impoundments have ever overtopped?
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1 **A When this permit was issued and they**
 2 **gave us the descriptions, the legal descriptions**
 3 **of the impoundments.**
 4 **Q** Were you aware prior to you submitting
 5 comments on the permit or only after the permit
 6 was issued?
 7 **A I think after the permit was issued.**
 8 **Q** So under this permit, if no prior
 9 authorization is granted by the program, Stephens
 10 Energy is required to contain all effluent,
 11 correct?
 12 **A I don't think so.**
 13 **Q** So under this permit, if they don't
 14 receive permission from the WYPDES program, they
 15 are not required to contain all effluent? Let me
 16 rephrase.
 17 **A Well --**
 18 **Q** The bottom of Page 1 of the permit
 19 statement of basis that you read earlier contains
 20 the phrase that they are "required to contain all
 21 effluent" subject to this prior written
 22 authorization from the WYPDES program, correct?
 23 **A Well, I think you can discharge in a**
 24 **storm event.**
 25 **Q** With written approval, correct?
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1 **A Not that I could recall in these**
 2 **specific ones.**
 3 **Q** Going back to the issue of the permits
 4 being authorized in 2001 and 2002, would PRBRC
 5 have been harmed -- or was PRBRC harmed by the
 6 authorization of those permits?
 7 **A I think our -- the concern we have is**
 8 **that our members downstream on Spotted Horse Creek**
 9 **have certainly been harmed over the last decade by**
 10 **upstream coalbed methane discharges, and there has**
 11 **been a lot of reservoirs upstream that are**
 12 **contributing to those discharges.**
 13 **It's a cumulative issue of water, and so**
 14 **if -- and the seepage issue is a concern that adds**
 15 **to this whole salinity and water-logging and**
 16 **cumulative volume of water that goes downstream in**
 17 **Spotted Horse.**
 18 **Q** So PRBRC and its members were harmed in
 19 2001 and 2002 by the issuance of this previous
 20 permit?
 21 **A Could have been.**
 22 **Q** Was there any reason that PRBRC nor any
 23 of its members challenged any of those permits?
 24 **A No, we did not.**
 25 **Q** Why didn't you?
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1 **A We were just becoming aware at that time**
 2 **frame of the increasing volumes and problems with**
 3 **CBM discharge water.**

4 **Q** And what year was PRBRC formed?

5 **A 1973.**

6 **Q** I would like now to refer to the two
 7 maps that I sent over this morning.

8 MR. SPARKS: Alison, do you have those
 9 available?

10 MS. OCHS: Yes.

11 MR. SPARKS: I would like those marked
 12 as Exhibits 4 and 5.

13 MS. OCHS: Do you want to be specific on
 14 which map is which?

15 MR. SPARKS: We'll mark Exhibit 4 as the
 16 map that contains topo, not the photograph.
 17 That's the one that's primarily white with some
 18 green.

19 MR. ESCH: Bill, do you want to go ahead
 20 and mark this other one Exhibit 5?

21 MR. SPARKS: Yes. The one that has the
 22 aerial photography we can mark as Exhibit 5.

23 MR. ESCH: Okay.
 24
 25

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1 **Q** Do you have any specific evidence that
 2 any of these three impoundments authorized by this
 3 permit have overtopped?

4 **A I don't know that I have specific**
 5 **evidence. Like I said, I've flown over this area**
 6 **after storm events, and almost every single**
 7 **reservoir is overtopping.**

8 **Q** Okay. But you have no specific evidence
 9 as to this specific permit and these specific
 10 impoundments? If you have the evidence, I'd like
 11 to see it.

12 **A Yeah, not -- I'd have to really go back**
 13 **and look at previous years' photographs and**
 14 **things; but, no, not that I can think of for sure**
 15 **related to these specific impoundments.**

16 **Q** Okay. So at present you do not have
 17 that evidence?

18 **A No.**

19 **Q** At present, do you have any evidence
 20 that any of these impoundments have specifically
 21 leaked or seeped as to this permit into these
 22 three specific impoundments?

23 **A Well, I would be really surprised if**
 24 **these reservoirs never seeped or leaked.**

25 **Q** Okay. I'm asking you if you have any
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1 (Whereupon the documents referred to by
 2 counsel were marked for identification as
 3 Deposition Exhibits 4 and 5, after which the
 4 proceedings continued as follows:)

5
 6 **Q** (By Mr. Sparks) On Exhibit 4, is this
 7 an accurate depiction of how you understand the
 8 relationship to exist between Stephens' reservoirs
 9 and the West irrigation meadows as depicted on
 10 this map?

11 **A Yes.**

12 **Q** Do you see where the Spotted Horse Creek
 13 runs to the north and east of Stephens'
 14 reservoirs?

15 **A Yes.**

16 **Q** You had said earlier that your main
 17 concern with these reservoirs is from leakage and
 18 seepage; is that correct?

19 **A Well, leakage, seepage and I think any**
 20 **overtopping or even the assimilative capacity**
 21 **discharge.**

22 **Q** Do you have any evidence that these
 23 three impoundments specifically authorized under
 24 this specific permit have overtopped?

25 **A I'm sorry. I didn't hear that.**

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1 specific evidence in your possession that these
 2 three impoundments have seeped or leaked?

3 **A No, other than the fact that almost**
 4 **every single impoundment leaks.**

5 **Q** But to make sure I understand, just so
 6 I'm clear, in your possession you do not have any
 7 of that evidence?

8 **A No.**

9 **Q** One second, while I confer. One second.
 10

11 (Whereupon a discussion was held off the
 12 record, after which the proceedings continued as
 13 follows:)

14

15 MR. SPARKS: You ready?

16 MS. OCHS: Yes, we're ready.

17 **Q** (By Mr. Sparks) I just had one other
 18 quick question regarding the map.

19 Is it your understanding from observing
 20 these maps, that the distance between the West
 21 property and the impoundment is approximately 11
 22 miles?

23 **A I think one of the impoundments is**
 24 **closer than that.**

25 **Q** That would be Impoundment Four?

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1 **A Right.**
 2 **Q** Do you think it's in the seven-to-eight-
 3 mile range?
 4 **A Yeah, maybe even a little closer than**
 5 **that, but -- yeah.**

6 **Q** How close do you think?
 7 **A I don't know, it looks from the map**
 8 **around six to seven.**

9 **Q** One second. I just want to check on one
 10 more thing.

11 I would like to now refer to the PRBRC
 12 response to Stephens Requests for Discovery and
 13 have this marked as Deposition Exhibit 6. And I
 14 would like to refer to response to your
 15 Interrogatory Number 2.
 16

17 (Whereupon the document referred to by
 18 counsel was marked for identification as
 19 Deposition Exhibit 6, after which the proceedings
 20 continued as follows:)

21
 22 **Q** (By Mr. Sparks) If you could read the
 23 second sentence on the top of Page 6 in response
 24 to Interrogatory Number 2, it begins with the
 25 phrase, "The burden is not..."

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1 **Q** So the Petitioners, in your opinion,
 2 have no burden in challenging a permit issued by
 3 the DEQ?

4 MS. OCHS: Objection as to legal
 5 conclusion, request for legal conclusion.

6 MR. SPARKS: I'll rephrase.

7 **Q** Is it your understanding, as explained
 8 in your Interrogatory Number 2, that the
 9 Petitioners have no burden in challenging a permit
 10 issued by DEQ?

11 **A Well, I mean, just by the fact that we**
 12 **challenge it we have a burden, but --**

13 **Q** What burden would that be?

14 **A The burden is that we have to file the**
 15 **challenge; and I think what we have shown is**
 16 **through the scientific evidence that DEQ -- DEQ's**
 17 **permitting is not protective of the agricultural**
 18 **uses, because they didn't use a valid methodology.**

19 **DEQ -- how has DEQ shown those limits**
 20 **are protective?**

21 **Q** Okay. I'll rephrase.

22 At the beginning of your answer you said
 23 that your only burden is to file the challenge; is
 24 that your only burden, if you file a challenge to
 25 a permit issued by the DEQ?

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1 **A "The burden is not on the Petitioners to**
 2 **allege, detail and prove that discharges**
 3 **authorized by the permit will result in adverse**
 4 **impacts."**

5 **Q** So it is your position that PRBRC or the
 6 Petitioners will not have to show any harm in
 7 appealing the permit?

8 **A The requirement under the rules and regs**
 9 **is that permits have to be issued that protect**
 10 **current and existing uses, and that all produced**
 11 **water has to be protective of agricultural uses,**
 12 **so DEQ's job is to ensure that all water they**
 13 **permit for discharge is protective of agricultural**
 14 **uses and is protective of those uses.**

15 **The burden isn't on the landowners in**
 16 **Powder River. I mean, it's DEQ's job. That's why**
 17 **we have DEQ. Their job is to protect the**
 18 **environment.**

19 **Q** So in challenging a permit, it's your
 20 position that the Petitioners need only allege
 21 that DEQ has not done its job without establishing
 22 that there are any adverse impacts from the
 23 issuance of the permit?

24 **A Yeah. The burden is on DEQ to show that**
 25 **that permit is protective.**

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1 MS. OCHS: I'm continuing my objection.
 2 This line of questioning is asking my client for a
 3 legal conclusion.

4 But to the extent you can, feel free to
 5 answer.

6 **A Well, I mean, our burden is we have to**
 7 **hire lawyers and experts just to get DEQ to do its**
 8 **job.**

9 **Q** (By Mr. Sparks) Okay. So as you
 10 understand it, there is no burden to show any
 11 adverse impact from the issuance of the permit?

12 **A No. DEQ has to show that those impacts**
 13 **will not cause harm. They have to protect the**
 14 **current existing uses, and they have to show that**
 15 **their permit does that.**

16 **Q** All right. Couple more questions. One
 17 is regarding the -- earlier in the deposition you
 18 had explained how you assist and advise landowners
 19 and other members of the PRBRC.

20 Can you further explain what kind of
 21 assistance you provide to these landowners and
 22 members of PRBRC?

23 **A The kind of assistance I provide is --**
 24 **well, it varies; and some of it isn't so much**
 25 **assistance as it is just general organizing work**

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1 in terms of helping people work together to lessen
2 impacts, to address Federal and state
3 bureaucracies that permit this development.

4 Some landowners don't even understand
5 initially -- they certainly do now over the last
6 decade or more -- how all of this gets permitted
7 and happens.

8 So part of my job is, you know, they
9 begin to understand what permits the BLM issues,
10 what permits the DEQ issues, what permits the Oil
11 and Gas Commission issues, what permits the State
12 Engineer issues; and if and how they can get those
13 government agencies to do the job they are
14 required to do to protect the public interest.

15 Q So you help organize meetings?

16 A Right.

17 Q Do you help them provide comments on
18 proposed rules and regulations?

19 A Sometimes.

20 Q Do you help them --

21 A Sometimes all I do is let them know that
22 there's an opportunity for public comment, and
23 they provide their own.

24 Q Sometimes do you help them draft these
25 public comments?

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1 (Whereupon a discussion was held off the
2 record, after which the proceedings continued as
3 follows:)

4
5 MR. SPARKS: This is Bill Sparks. I
6 think we're done with this round of questions from
7 us.

8 MS. OCHS: Okay.

9 MR. ESCH: Are you going to have
10 anything?

11 MS. OCHS: I don't know.

12 Okay. I think we are done. Thank you,
13 gentlemen.

14 MR. ESCH: Thank you, Ms. Morrison.

15 THE WITNESS: Thank you.

16 MR. ESCH: All right. So off the
17 record.

18 MS. OCHS: We'll read and sign.

19
20 (Whereupon the deposition
21 proceedings were concluded
22 at 10:38 a.m. on Wednesday,
23 January 13th, 2010.)

24 (SIGNATURE REQUESTED)
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1 A Not very often. Most of our folks are
2 pretty capable at having their own strong
3 opinions.

4 Q Have you specifically helped someone
5 draft a public comment on proposed rules and
6 regulations?

7 A I think what I've done is made them
8 aware that they are able to comment on proposed
9 rules and regulations.

10 Q And one last question: What is the
11 primary funding or funding in general for the
12 PRBRC, and where did it come from?

13 A Our membership and foundation grants.

14 Q Which foundation grants; do you have
15 that information?

16 A You know, I don't do that. Our
17 executive director does the function. And I think
18 those are available under some documents filed
19 with the Federal government, which you can look
20 those up.

21 MR. SPARKS: I think we'd like to take a
22 five-minute break, if that's okay.

23 MS. OCHS: Sure.

24 MR. ESCH: That's fine. Off the record.
25

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1 REPORTER'S CERTIFICATE

2
3 I, CAROL A. O'BRYAN, a Certified Court
4 Reporter and a Notary Public of the State of
5 Wyoming, do hereby certify that JILL MORRISON was
6 by me first duly sworn to testify to the truth,
7 the whole truth, and nothing but the truth;
8

9 That the foregoing transcript, consisting
10 of 51 typewritten pages, is a true record of the
11 testimony given by the said deponent, together
12 with all other proceedings herein contained.
13

14 IN WITNESS WHEREOF, I have hereunto set
15 my hand and affixed my Notarial Seal this 2nd day
16 of February, 2010.
17
18

19 _____
20 Carol A. O'Bryan
21 Certified Court Reporter

22 My Commission Expires:

23 October 13th, 2012
24
25

O'BRYAN & O'BRYAN REPORTING SERVICE
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DEPONENT'S CERTIFICATE

I, JILL MORRISON, do hereby certify that I have read the foregoing transcript of my testimony consisting of 51 pages taken on January 13th, 2010, and that the same is a full, true and correct record of my deposition.

JILL MORRISON

() No changes () Changes attached

Subscribed and sworn to before me this

----- day of -----, 2010.

Notary Public

My Commission Expires:

October 13th, 2012

O'BRYAN & O'BRYAN REPORTING SERVICE (307) 672-3354

CAROL A. O'BRYAN, CCR
6 Cottonwood Drive
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Jill Morrison
PRBRC
934 North Main Street
Sheridan, WY 82801

Date: 2-2-10

Re: West (PRBRC)

Dear Jill,

I am enclosing the original of the transcript of your deposition in the above-entitled matter for your convenience in reading and signing your deposition.

I would appreciate if you could read your depo, return the original deposition with the signature pages attached to Mr. Esch, who took your deposition, within the next 30 days so the original may be prepared for delivery and use in the court case in this matter. Please return the original depo in the addressed envelope I'm enclosing for your convenience in returning it.

The necessary pages -- which are marked with tabs so you can easily find where to sign -- are at the back of your deposition. Please do not mark on the face of the deposition, but use the attached forms, if necessary, to make corrections.

Please remember that you must sign before a Notary Public, so please indicate the corrections as you read but do not sign until you are before the notary.

Very truly yours,

Carol A. O'Bryan
Certified Court Reporter

Enc. O'BRYAN & O'BRYAN REPORTING SERVICE (307) 672-3354

SIGNATURE PAGE

I, JILL MORRISON, the aforementioned witness, have read my deposition transcript; and have made the following corrections:

- REASONS 1-- Clarify the Record
- FOR CHANGES: 2-- Conform to Facts
- 3-- Correct transcription error

Use 1, 2, 3

Correction As Reason for

Page Line (Change from) (Change to) Change

Table with 4 columns: Page, Line, (Change from), (Change to), Change. Rows 10-16 are empty.

JILL MORRISON

SUBSCRIBED AND SWORN TO before me this

----- day of -----, 2010 by -----.

Notary Public

My Commission Expires: -----

O'BRYAN & O'BRYAN REPORTING SERVICE (307) 672-3354

Exhibit 4

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL

STATE OF WYOMING

Docket No. 09-3807

IN THE MATTER OF THE APPEAL OF POWDER RIVER BASIN
RESOURCES COUNCIL, AND WILLIAM F. WEST RANCH, LLC,
FROM WYPDES PERMIT NO. WY0094056

DEPOSITION OF GINGER PAIGE, Ph.D.
Wednesday, January 20, 2010
10:03 a.m.

Taken in behalf of the Respondent, pursuant to
Notice, and in accordance with the Wyoming Rules of
Civil Procedure, at the offices of UW Office Annex, 406
South 21st Street, Laramie, Wyoming, before Merissa
Racine, Registered Diplomate Reporter and Notary Public
in and for the County of Laramie, State of Wyoming.

2

1 APPEARANCES
 2
 3 For the Petitioner: DAVIS & CANNON
 4 422 West 26th Street
 5 Cheyenne WY 82001
 6 BY: MS. KATE FOX
 7
 8 For Stevens Energy: BEATTY & WOZNAK
 9 216 Sixteenth Street
 10 Suite 1100
 11 Denver, CO 80202-5115
 12 BY: MR. WILLIAM E. SPARKS
 13
 14 For the Respondent: MR. LUKE ESCH
 15 Assistant Attorney General
 16 123 Capitol Bldg.
 17 Cheyenne, WY 82002
 18
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 20
 21 PAGE
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 1 - Notice of Deposition 5
 2 - 10/31/09 Report of Dr. Paige 6
 3 - Opinion Report of Hendrickx and Buchanan 12

4

1 management from the University of Arizona.
 2 Q. How long have you been employed at the University
 3 of Wyoming?
 4 A. Since October of -- well, actually since August
 5 of 2004.
 6 Q. Do you instruct classes at UW?
 7 A. No, not usually.
 8 Q. What percentage of your work would be research
 9 and what percentage -- well, I guess, would be teaching?
 10 A. Well, it's not teaching, it's actually extension.
 11 Q. Okay.
 12 A. Thirty percent of my appointment is research, 60
 13 percent of my appointment is extension.
 14 Q. Have you ever been retained as an expert for any
 15 case in front of the Environmental Quality Council
 16 before?
 17 A. Yes, but under subpoena.
 18 Q. Subpoena. What case was that?
 19 A. This is a good question. It was the Pumpkin
 20 Creek case.
 21 Q. Have you ever testified in front of the EQC in
 22 any rulemaking?
 23 A. Yes, I have.
 24 Q. And which rulemakings?
 25 A. The Tier 2 evaluation, evaluation of the Tier 2

3

1 PROCEEDINGS
 2 GINGER PAIGE, Ph.D.,
 3 having been first duly sworn, was examined and testified
 4 as follows, to-wit:
 5 EXAMINATION
 6 BY MR. ESCH:
 7 Q. Could you identify yourself for the record,
 8 please.
 9 A. Dr. Ginger Paige.
 10 Q. And where are you employed?
 11 A. University of Wyoming.
 12 Q. And how long have you been employed there?
 13 A. Since October of 2004.
 14 Q. Have you ever been deposed before?
 15 A. Yes, I have.
 16 Q. So you're aware that if you don't understand my
 17 questions you can ask me to repeat it or rephrase it,
 18 and we can do so?
 19 A. Yes.
 20 Q. Could you please describe your educational
 21 background.
 22 A. Yes. I have a Bachelor's degree in political
 23 science from the Colorado College. I have a Master's of
 24 Science degree in soils physics from the University of
 25 Massachusetts, and I have a Ph.D. in watershed hydrology

5

1 methodology. I've appeared under that. I actually
 2 appeared once briefly under the beneficial use case
 3 before them.
 4 Q. Was it a rulemaking, or was it a case?
 5 A. I guess -- That's a good question. I do not
 6 know. That's legal stuff.
 7 Q. All right. I'm going to hand you a document, and
 8 I want you to tell me if you've seen that before?
 9 A. Yes.
 10 Q. This is the Notice of Deposition that I sent you;
 11 is that correct?
 12 A. This is correct.
 13 Q. And it says that, "Respondent DEQ requests that
 14 the deponent bring all documents and any other materials
 15 referenced or relied upon for the analysis, conclusions
 16 or opinions in or relating to her expert report and her
 17 expected testimony at the hearing in this case."
 18 Did you do so in this -- today?
 19 A. For the most part. I'm missing one book.
 20 Q. Okay. I'll mark that as Deposition Exhibit 1.
 21 And I also have a second page.
 22 (Thereupon Deposition 1 was marked.)
 23 A. A student has my other book, but -- the book
 24 that's cited, and I brought a copy of the evaluation of
 25 the Tier 2 method that was done by the expert, and

<p style="text-align: right;">6</p> <p>1 those, I believe, are the things that I cited. 2 Q. I don't know if you might have already done this, 3 but could you identify for me the book that you didn't 4 bring. 5 A. It's by CW Rose. Title is -- I don't think of 6 these things by title. It's the Rose 2004 book. 7 There's my expert scientific opinion. Yeah, it's 8 Introduction to the Environmental Physics of Soil, Water 9 and Watersheds, was the other book that I used and 10 cited. 11 Q. Introduction to Environmental Physics? 12 A. Of Soil, Water and Watersheds. 13 MS. FOX: It's in her report, Luke. 14 MR. ESCH: It is. 15 A. It is. I have the full citation there. 16 Q. (By Mr. Esch) Well, thank you. Okay. Well, 17 let's get to the expert report. I'm going to hand you a 18 copy of what I understand to be your expert report. 19 A. See, this would have saved me the trouble of 20 looking it up. Yes. 21 Q. Would you agree that's an accurate copy of your 22 expert report in this case? 23 A. Yes. 24 Q. You can take your time. I'll go ahead and offer 25 this as Deposition Exhibit 2.</p>	<p style="text-align: right;">8</p> <p>1 questions I was asked. 2 Q. Okay. What opinions are not contained in your 3 report that you intend to offer to the council? 4 A. None. 5 Q. None. So your opinions are confined to your 6 report? 7 A. Correct. 8 Q. Okay. I'd like to ask you a few questions now 9 about some of the statements in your report. 10 A. Okay. 11 Q. So going through your report, as I understand it, 12 you disagree with the way the methods were developed to 13 arrive at these limits; is that correct? 14 A. Correct. 15 Q. Okay. So I refer you to page 1 of your report. 16 It says, "In general, effluent limits established for 17 WYPDES 0094056 have not been determined using a 18 method 19 that results in scientifically defensible or reasonable 20 limits for EC of discharge waters that are protective of 21 agricultural uses." 22 Could you explain a little bit to me about this 23 statement, what are your bases for this statement? 24 A. My bases for the statement are that the effluent 25 limits for EC were determined using Tier 2 methodology, sampling the soils within the area, and using the EC of</p>
<p style="text-align: right;">7</p> <p>1 (Thereupon Deposition Exhibit 2 was marked.) 2 Q. So who retained you in this matter to provide 3 this expert report? 4 A. Davis & Cannon. 5 Q. What did they provide you with to review in 6 preparation for your report? 7 A. Let's see. They sent me a letter requesting that 8 I respond to two questions regarding the permit. They 9 did send me a copy of the permit. They also sent me 10 copies of the Tier 2 evaluation. 11 Q. Tier 2 evaluation. Could you be a little more 12 specific? 13 A. I believe it's the -- Oh, no, I can't, 'cause I 14 didn't actually pay much attention to it. It's the 15 evaluation of the background soil and water quality at 16 the West Ranch. 17 Q. The Tier 2 2006 -- 18 A. Evaluation, the 2006 evaluation. 19 Q. That was performed by Devon, as you understand 20 it? 21 A. As I understand it. 22 Q. Just want to make sure we have the right one. 23 Does your report contain all your opinions on the 24 contested permit? 25 A. No. My report contains specific answers to the</p>	<p style="text-align: right;">9</p> <p>1 the soils to determine background EC limit for the 2 waters. 3 Q. Okay. And you rely heavily on the findings of 4 Hendrickx and Buchanan for this determination? 5 A. Yes, as well as my own knowledge in this area. 6 Q. Okay. 7 A. I actually made statements to the EQC that this 8 was not a scientifically defensible method before the 9 report came out. 10 Q. So why is it not scientifically defensible? 11 A. There's no way to actually determine background 12 water quality from soil samples of EC. It's just -- 13 It's not possible. 14 Q. Could you explain a little to me about it? 15 A. Soil physics? 16 Q. All right. 17 A. So when water moves through the soils it has a 18 charge, right, polarity. And it actually will pick up 19 minerals and dissolved salts from the soils. So it will 20 actually, depending on the soils and mineralogy of the 21 soils, will actually change in terms of its chemical 22 composition as it moves through the soils. So it's very 23 common, especially in semi arid climates, for water to 24 pick up salts from soil as it moves through. And these 25 salts will end up moving within the soil profile with</p>

10	<p>1 the wetting front. So that means as water infiltrates 2 into the soil, moves down through the soil profile 3 picking up salts, salts will move usually with the 4 wetting front, with the highest sort of water 5 concentration. 6 Q. Is that what you mean, wetting front? 7 A. Wetting front. 8 Q. Okay. 9 A. And it's also the front part, if you picture a 10 column of water just moving through soil, wetting front 11 is that first part of the water as it moves through, if 12 it's a dry soil. 13 Q. Okay. 14 A. So the salts will move with the water, and so if 15 it -- you only have a certain amount of water, it might 16 move maybe, oh, anywhere from 5 centimeters to 30 17 centimeters into the soil profile, depending upon the 18 amount of water that's applied, or rainfall application 19 or irrigation. 20 And then when water stops moving into the soil, 21 it's subjected to evapotranspiration forces, and will 22 move up, so you'll actually see water then moving up and 23 down within the soil profile, moving salts within the 24 soil profile, soluble salts. 25 Q. Okay.</p>	12
11	<p>1 A. So it's a dynamic process. And this happens with 2 natural rainwater, water that doesn't have high EC or 3 SAR; you see the same phenomena occurring. So you will 4 end up, in a climate like this, a semi arid climate like 5 Wyoming, Arizona, with salts building up in the soil 6 profile. It's a natural occurrence even under very good 7 water -- water quality applications. 8 Q. So just the natural occurrence in nature, soils 9 will build up in soil profiles? 10 A. Depending on where you are in a watershed, where 11 you are in the soil, the soil texture, depth to water, 12 where you are in the season, -- 13 Q. Well -- 14 A. -- many factors. 15 Q. I apologize. 16 A. But, yes. 17 Q. You refer to it being a natural phenomena -- 18 A. Correct. 19 Q. -- and happens. So in an ephemeral drainage, not 20 in Wyoming, but in a semi arid climate it's possible 21 these soils would salinize naturally? 22 A. Or build up salts, not necessarily become 23 salinized, which -- but will actually end up with layers 24 with salt accumulation, calcic horizon, pedocalcic 25 horizon. It's very common.</p>	13

1 Q. For my benefit what's a calcic horizon?
 2 A. Calcium carbonate dominating the soil horizon.
 3 Q. All right. And I did see in your report that you
 4 refer to the Hendrickx Buchanan report, the May 2009
 5 report. I'd like to ask you a few questions about that
 6 report.
 7 A. Okay.
 8 Q. Do you have that in front of you?
 9 A. I do.
 10 Q. Well, I made a copy for you just in case.
 11 A. Okay.
 12 Q. And go ahead and offer this one as Deposition
 13 Exhibit 3.
 14 (Thereupon Deposition Exhibit 3 was marked.)
 15 MS. FOX: Do you have another one, Luke?
 16 MR. ESCH: I got another one, but I just
 17 didn't have a stapler.
 18 MS. FOX: I can take care of that. Thank
 19 you.
 20 Q. (By Mr. Esch) I'm going to ask you a few
 21 questions about this report, and basically I'm going to
 22 pull some sentences, some phrases out of this report,
 23 and ask if you agree or disagree with those statements.
 24 A. All right.
 25 Q. I refer you to page 10. And in the first

1 paragraph it says, the sentence begins, "On the
 2 Contrary, pre-existing background water quality appears
 3 to be a minor factor or none at all."
 4 Would you agree with that statement? And you can
 5 read the whole paragraph to provide context.
 6 MS. FOX: I'm going to object to the form of
 7 that question as being vague.
 8 (Brief pause.)
 9 A. Does that mean I still answer?
 10 MS. FOX: Yeah.
 11 A. Sorry. It is vague. I find it to be a factor.
 12 In this case I think they're talking about the fact that
 13 it's one of many. That doesn't mean that applying water
 14 of bad quality is good, but it means that there's many
 15 other factors besides the background water quality that
 16 have to be taken into account.
 17 Q. (By Mr. Esch) Okay. And same, similar question,
 18 in the second paragraph, says, "The Tier 2 assumption is
 19 scientifically flawed for several reasons. Effluent
 20 water quality that is better than preexisting background
 21 water quality could still cause severe soil salinity."
 22 And do you agree with that statement?
 23 A. Yes. In a certain context. Not without caveats
 24 thrown in.
 25 Q. Please go ahead and describe some of the caveats

<p style="text-align: right;">14</p> <p>1 for me.</p> <p>2 A. It's the same thing as why we don't drink</p> <p>3 distilled water, because drinking distilled water, one</p> <p>4 has the feeling that it would be great. But what it</p> <p>5 does is it leaches you more -- leaches all the minerals</p> <p>6 out of you more than actually replenishing you. So</p> <p>7 that's the reason that when you buy sort of treated</p> <p>8 water in a grocery store, they've actually added</p> <p>9 minerals back into the water, not only because it tastes</p> <p>10 better, because it decreases the leaching potential of</p> <p>11 water. So in that context it's very important to know</p> <p>12 what's going on.</p> <p>13 And also I think the context that they're talking</p> <p>14 about is that it is a complex interaction. So it really</p> <p>15 depends on soil profile, the amount of water, the</p> <p>16 chemical composition of the soil, cation exchange</p> <p>17 capacity of the soil, the amount of sodium, the amount</p> <p>18 of magnesium will all influence this, but it is true.</p> <p>19 Q. Okay.</p> <p>20 A. But it has to be viewed within the context of</p> <p>21 what -- It doesn't mean that all of a sudden bad water</p> <p>22 is much better, bad quality water. It just means, oh,</p> <p>23 you have to do it in site specific, application</p> <p>24 specific.</p> <p>25 Q. So it's definitely site specific, there's a lot</p>	<p style="text-align: right;">16</p> <p>1 I do agree.</p> <p>2 Q. Okay. I refer you to page 22 of the same</p> <p>3 document. And the last paragraph of the page it</p> <p>4 says, "The use of Tier 1 can be continued since it's</p> <p>5 conservative and has been accepted by the community."</p> <p>6 Would you agree with that statement?</p> <p>7 A. Oh, in general. I think there are also</p> <p>8 limitations with the Tier 1 method as it's being</p> <p>9 applied, but in general I find the method to set the</p> <p>10 limits to be much better in Tier 1 than they were in</p> <p>11 Tier 2.</p> <p>12 Q. Okay. Would you agree with this statement: "A</p> <p>13 threshold EC value of 4 decimeters per meter in the root</p> <p>14 zone is acceptable for alfalfa in Wyoming"?</p> <p>15 A. No.</p> <p>16 Q. Is alfalfa a sensitive species for EC?</p> <p>17 A. It is.</p> <p>18 Q. Do you know what type of crops the Wests have on</p> <p>19 the ranch?</p> <p>20 A. No, I do not.</p> <p>21 Q. Do you know where the outfalls in this contested</p> <p>22 permit are in relationship to the Wests' property?</p> <p>23 A. No. My understanding is that they're up,</p> <p>24 upstream, up in the watershed.</p> <p>25 Q. Okay. And are you aware that there are</p>
<p style="text-align: right;">15</p> <p>1 of factors involved?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. So --</p> <p>4 A. And I also believe it to be sort of a minor</p> <p>5 caveat.</p> <p>6 Q. Could you explain that, a minor caveat?</p> <p>7 A. Meaning that in some cases it's true that, you</p> <p>8 know, applying water with a different chemical</p> <p>9 composition might infiltrate better, but that's probably</p> <p>10 not the norm. It's probably the exception, but it's</p> <p>11 good to know.</p> <p>12 Q. So these are very site specific conditions, a lot</p> <p>13 of factors taken?</p> <p>14 A. Yeah.</p> <p>15 Q. Okay. Let's go to the next statement then the</p> <p>16 "effluent water quality that is worse than the</p> <p>17 preexisting background quality may be used beneficially</p> <p>18 on artificially irrigated lands." Do you agree with</p> <p>19 that statement?</p> <p>20 A. Again, it depends on the situation specifically,</p> <p>21 as to whether it will be more beneficial or less.</p> <p>22 Q. More managed situation?</p> <p>23 A. Whether it's -- No. Whether it's beneficial will</p> <p>24 depend on the type of management, the type of</p> <p>25 application, how it's applied, where you are. But, yes,</p>	<p style="text-align: right;">17</p> <p>1 discharges contained in reservoirs in this permit?</p> <p>2 A. I am. Are they lined water -- lined containment</p> <p>3 or unlined?</p> <p>4 Q. They're unlined.</p> <p>5 A. So I don't know if that's fully contained.</p> <p>6 Q. Okay. Have you discussed this case with any of</p> <p>7 your colleagues?</p> <p>8 A. No, I have not.</p> <p>9 Q. Have you discussed the findings of the Hendrickx</p> <p>10 -- the 2009 May Hendrickx Buchanan report with any of</p> <p>11 your colleagues?</p> <p>12 A. Oh, yes.</p> <p>13 Q. Could you identify them for me?</p> <p>14 A. Yes. Dr. Larry Munn, Dr. George Vance.</p> <p>15 Q. Those are the -- your only colleagues that you've</p> <p>16 discussed this with?</p> <p>17 A. Probably Dr. Ann Hild and Dr. Scott Miller.</p> <p>18 Q. All right. Have you discussed this case with any</p> <p>19 members of the EQC?</p> <p>20 A. No, I have not.</p> <p>21 Q. Have you discussed this, the findings of the</p> <p>22 Hendrickx Buchanan May 2009 report with any members of</p> <p>23 the EQC?</p> <p>24 A. Yes, I have.</p> <p>25 Q. Who have you discussed it with?</p>

<p style="text-align: right;">18</p> <p>1 A. Tim Flitner. 2 Q. Flitner. So, finally, does this report contain 3 all of your opinions regarding the contested permit? 4 A. The -- Which report? 5 Q. Your expert report. 6 A. It actually contains my responses to the 7 questions I was asked. 8 Q. So if you were called to testify at the hearing 9 what else would you testify about? 10 A. I don't know. 11 Q. You don't have any expected testimony? 12 A. No, I do not. 13 Q. This is the opportunity I get to ask you about 14 your opinions in this case, so I am trying to get an 15 idea of what you would testify to so I can ask some 16 questions about that. 17 A. Okay. Well, actually I was asked to -- for my 18 expert opinion on two questions, and so I offered my 19 expert -- I offered responses, expert question (sic). 20 Q. So you don't anticipate to testify to anything 21 outside the scope of your expert report? 22 A. Not that I'm aware of. These are the questions I 23 was asked to offer opinions on, and I did so. 24 MR. ESCH: All right. Well, that is all I 25 have. Thank you.</p>	<p style="text-align: right;">20</p> <p>1 A. Correct. 2 Q. As relates to the permit, you said that you 3 skimmed it. Have you ever visited the three 4 impoundments that are authorized in that permit? 5 A. I have not visited the impoundments, no. 6 Q. Have you ever tested soils or water in relation 7 to those three impoundments? 8 A. I have not. 9 Q. Have you personally tested water or soil on that 10 west property? 11 A. I have not. 12 Q. As relates to those three impoundments, are you 13 aware of any evidence of any breaches, leaks, seeps or 14 any water leaving those impoundments? 15 A. No, I'm not. 16 Q. Earlier you said that you -- Mr. Esch asked you a 17 question about if you were aware that the impoundments 18 were fully contained, and you -- what was your response 19 to that again? 20 A. I asked if the impoundments were lined. 21 Q. And he advised that they were not? 22 A. Correct. 23 Q. And your response to that was? 24 A. Then they may not be fully contained. 25 Q. What do you mean by that, can you explain that?</p>
<p style="text-align: right;">19</p> <p>1 A. Okay. 2 EXAMINATION 3 BY MR. SPARKS: 4 Q. Hi. My name is Bill Sparks. I represent Stevens 5 Energy in this appeal. How did you go about preparing 6 for this deposition? 7 A. Actually I didn't do a lot to prepare for this 8 deposition. I reread my report that I had sent, and I 9 reread the expert scientific opinion on the Tier 2 10 methodology last week so that I made sure that it was 11 sort of forefront in my head. 12 Q. Did you review the permit prior to this 13 deposition? 14 A. I did not. 15 Q. Prior to your expert report did you read the 16 permit? 17 A. I glanced through it, but I did not study it. 18 Q. Prior to your expert report did you read the 19 Section 20 compliance that Devon prepared? 20 A. I glanced through it. Again, I did not study it 21 'cause I was really just asked to -- for my expert 22 opinion on two questions. 23 Q. So in that regard you did not assist in 24 responding to discovery in this case either, you only 25 answered those two questions?</p>	<p style="text-align: right;">21</p> <p>1 If they're not lined then how does that equate to not 2 fully contained? 3 A. Because water will actually infiltrate and leach 4 from the bottom of some of these ponds. 5 Q. How far, how much? Do you have any -- 6 A. It will actually depend on the surrounding soils, 7 where they are in the watershed, the amount of water, 8 the hydraulic pressure, pore size distribution in the 9 soils, and the chemistry of the water. 10 Q. Do you know, have you ever -- Do you know any of 11 those types of qualities for these soils or these 12 waters? 13 A. Not specifically, no. 14 Q. So you cannot give an opinion on how much the 15 water there will leach? 16 A. No, I cannot. 17 Q. Do you know how much water is discharged into the 18 three impoundments? 19 A. No, I don't. 20 Q. You said that you had -- you take issue with the 21 methodology that was used to establish the EC for this 22 permit. Do you know what the EC for this permit is? 23 A. At one point I did. I don't recall. 24 Q. This is a copy of the permit. We can mark it as 25 Exhibit 4.</p>

<p style="text-align: right;">22</p> <p>1 MS. FOX: Could we go off the record for a 2 second? 3 MR. SPARKS: Sure. 4 (Off the record discussion.) 5 MS. FOX: Can we not mark it again? 6 MR. SPARKS: That's fine. 2600; is that 7 right, Luke? 8 MR. ESCH: 2680. 9 Q. (By Mr. Sparks) 2680, does that sound right? 10 MS. FOX: What page you looking at, Bill? 11 MR. ESCH: Bottom of page 2. 12 MR. SPARKS: 2680. 13 (Brief pause.) 14 MS. FOX: What was your question, Bill? 15 Q. (By Mr. Sparks) I was asking you if you knew what 16 the EC limit was? 17 A. I didn't then, and I do now, I just read it. 18 Q. That's all I was asking. In your opinion is that 19 limit too low? 20 A. Too low? 21 Q. Um-hum. Or is it too high? 22 A. I'm not at liberty to actually respond directly 23 to the limit. I'm talking about the process of 24 determining the limit. 25 Q. Okay. Would the limit matter if all water was</p>	<p style="text-align: right;">24</p> <p>1 subsurface. This is how a lot of our base flow occurs 2 within our drainage systems. Our snow melt will slowly 3 melt into the soils, move through the soil system into 4 our channels and streams and surface water. It's very 5 common. And this moves by a mix of gravity flow and 6 matrix, so it will move both vertically and 7 horizontally, and it will move to the easiest route. So 8 as water moves through, if it meets something that has 9 sort of less infiltration capacity it will actually then 10 move in the direction of least resistance, which is 11 usually downstream. And if it's -- Common here is we 12 have usually coarser texture soils above more 13 infiltration limited soils, so water will often sort 14 of -- sort of build up along that interface, and then 15 move horizontally through the system. It's very common. 16 Q. Okay. But you've never done any research or 17 sampling or other studies regarding the soils in this 18 area of the Powder River Basin? 19 A. Not at this specific site, correct. 20 Q. So you have no opinion on how far, with what rate 21 or other types of actions the water would move -- 22 A. No. 23 Q. -- at this location? 24 A. You would have to measure the gradient and the 25 potential.</p>
<p style="text-align: right;">23</p> <p>1 contained in the impoundment? 2 A. No. If you could prove that all the water was to 3 be contained, no, it wouldn't matter. 4 Q. Do you have any evidence that for this area, 5 water would go through the bottom of the impoundment, 6 resurface 11 miles downstream? 7 A. Do I have any evidence that it will do that? 8 Let's see. It's an interesting way to put it. I do not 9 have direct evidence that it will, but probability is 10 that it will if the soils are similar to other 11 impoundments in the Powder River Basin. 12 Q. Can you explain how that process would work, how 13 would it infiltrate into the soils and then resurface 11 14 miles away? 15 A. Water moves into the soil just based on pressure 16 head and the fact that water has polarity and gravity 17 acting on it, and the soils actually have what they call 18 matrix potential. They actually pull water into them, 19 they actually have charge. So that's how water moves 20 into the soil. So if you put enough water on top of 21 soil it will actually move in, unless it's treated to 22 not infiltrate in. It's just what happens. 23 Q. Okay. 24 A. As to how it moves through the soil, a lot of our 25 water in Wyoming moves not over the surface but</p>	<p style="text-align: right;">25</p> <p>1 Q. But you have not been asked to do that? 2 A. I have not. 3 Q. A couple of quick questions on the Hendrickx 4 Buchanan report. Would you agree that this report did 5 not address the issue or the full containment of 6 reservoirs but only the direct discharge of waters into 7 ephemeral streams or tributaries? 8 A. I believe it was actually addressing discharge on 9 surface water, and not containment or full containment. 10 Q. It did not address full containment? 11 A. Correct. 12 Q. Just so I'm clear, other than water leaching 13 through the soils, would it matter what the EC and SAR 14 is in regards to water becoming surface water into a 15 tributary? 16 A. Yes, if it can spill over the top. So there's 17 two methods that water can -- discharge water cannot be 18 contained, right? So there's leaching out of the bottom 19 of the unlined pond or there's overflow. So it depends 20 on how large the containment is, and what size storm 21 it's been built for. 22 Q. So ignoring the possibility of leaching, -- 23 A. Okay. 24 Q. -- and if water never escaped the impoundment, 25 would it matter what the EC and SAR limits are?</p>

1 A. If it never escaped there, no. You'd end up with
 2 a nice giant saline pond, but, no. Which everybody
 3 loves.
 4 Q. And, again, you have no evidence that -- or no
 5 knowledge that my client, Stevens, has ever discharged
 6 water out of the impoundments?
 7 A. I have no direct knowledge of that.
 8 MR. SPARKS: I think that's all that I have.
 9 EXAMINATION
 10 BY MS. FOX:
 11 Q. I do have a couple of questions for you. You
 12 have done no study in the Spotted Horse Creek. Have you
 13 done studies related to infiltration in other drainages
 14 in the Powder River Basin?
 15 A. Not directly measuring infiltration, but I have
 16 looked at areas that have been subjected to CBM water in
 17 the Powder River Basin, and I have taken soil and water
 18 samples there.
 19 Q. Then are you familiar, generally, with reservoir
 20 infiltration patterns in that area?
 21 A. Not through direct measurements of mine but
 22 through measurements of my colleagues, yes.
 23 Q. And is it your assumption that -- and do you
 24 think it's a valid assumption that a reservoir in the
 25 Powder River Basin is likely to result in infiltration

1 DEPONENT'S CERTIFICATE
 2
 3
 4
 5 I, GINGER PAIGE, Ph.D., do hereby certify that I have
 6 read the foregoing deposition, and that the foregoing
 7 transcript and accompanying amendment sheets, if any,
 8 constitute a true and complete transcript of my
 9 testimony.
 10
 11 _____
 12 GINGER PAIGE, Ph.D. - Deponent
 13
 14 () No changes () Changes attached
 15
 16 Subscribed and sworn to before me this _____ day
 17 of _____, 2010.
 18
 19 _____
 20 Notary Public
 21 My Commission Expires _____.
 22
 23
 24
 25

1 unless it's lined?
 2 A. Yes.
 3 Q. Also relating to this Spotted Horse drainage, do
 4 you have any knowledge about other reservoirs or other
 5 sources of water in that drainage, other than the three
 6 impoundments at issue in this permit?
 7 A. No, I don't have knowledge.
 8 Q. And if there were other sources of water, would
 9 you consider that as a factor in the possibility of
 10 infiltrated water making its way 11 miles downstream?
 11 A. Oh, absolutely.
 12 Q. Because of the cumulative effects?
 13 A. Absolutely. And we've seen this in other
 14 drainages. SA Creek is a drainage where that's
 15 absolutely happened.
 16 MS. FOX: That's all I have. Thanks.
 17 MR. ESCH: Nothing further.
 18 (Proceedings concluded 10:42 a.m.)
 19
 20
 21
 22
 23
 24
 25

1 REPORTER'S CERTIFICATE
 2 State of Wyoming)
 3 : SS
 4 County of Laramie)
 5
 6 I, Merissa Racine, Registered Diplomate Reporter
 7 and Notary Public in and for the First Judicial
 8 District, State of Wyoming, hereby certify that there
 9 came before me, as hereinbefore noted, GINGER PAIGE,
 10 Ph.D., who was by me duly sworn according to law to give
 11 testimony relative to the above-captioned cause; that
 12 said testimony and proceedings were reported in
 13 stenotype by me; that the foregoing 1 - 29 pages,
 14 inclusive, constitute a true, correct, and complete
 15 transcript of my stenographic notes as reduced to print
 16 by means of computer-aided transcription.
 17 I further certify that I am not related to any
 18 party herein or their counsel and have no interest in
 19 the result of this litigation.
 20 Dated this 21st day of January, 2010.
 21
 22 _____
 23 MERISSA RACINE
 24 Registered Diplomate Reporter
 25

to
Marissa
Racine
JAN 29 2010
cc: Luketich
Bill Sparks

DEPONENT'S CERTIFICATE

4
5 I, GINGER PAIGE, Ph.D., do hereby certify that I have
6 read the foregoing deposition, and that the foregoing
7 transcript and accompanying amendment sheets, if any,
8 constitute a true and complete transcript of my
9 testimony.

8 Ginger Paige
9 GINGER PAIGE, Ph.D. - Deponent

10
11 No changes () Changes attached

12
13
14
15 Subscribed and sworn to before me this 26th day
16 of January, 2010.

17
18 Leah Marie Hanson
19 Notary Public

20 My Commission Expires July 1, 2010.

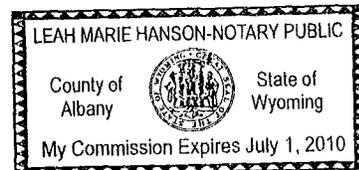


Exhibit 5

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

IN THE MATTER OF THE)	
APPEAL OF POWDER RIVER)	DOCKET NO. 09-3807
COUNCIL, AND WILLIAM F.)	
WEST RANCH, LLC FROM)	
WYPDES PERMIT NO.)	
WY0094056)	

**DECLARATION OF TERRY LOGAN IN SUPPORT OF STEPHENS ENERGY
COMPANY'S MOTION TO DISMISS AND MOTION FOR SUMMARY JUDGMENT**

1. My name is Terry L. Logan, I am over eighteen years of age and make the following statements from personal knowledge. I am the Vice President Engineering & Production for Stephens Energy Company, LLC (Stephens). As Vice President Engineering & Production, I have personal knowledge of Stephens' coalbed methane assets and development operations in Wyoming, including those associated with WYPDES Permit No. WY0094056. Stephens is a company in good standing authorized to do business in the State of Wyoming.

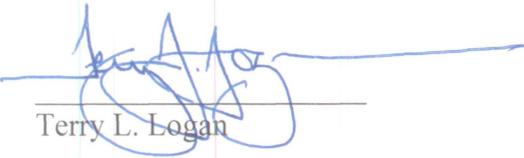
2. I make this declaration in support of Stephens' Motion to Dismiss and Motion for Summary Judgment *In the Matter of the Appeal of Powder River Basin Resource Council, and William F. Ranch, LLC from WYPDES Permit No. WY0094056*, Docket No. 09-3807 challenging the Wyoming Department of Environmental Quality's (DEQ) issuance of Permit No. 094056 to Stephens.

3. I have personal knowledge of Stephens' development operations in Wyoming, including those associated with the three impoundments and associated water discharges in Permit No. 094056. I have reviewed the Petition filed by Powder River Basin Resource Council (PRBRC), and William F. Ranch, LLC (West) (collectively, Petitioners), Petitioners'

responses to Stephen's and DEQ's discovery requests and the deposition transcripts of Dr. Ginger Paige, Jill Morrison (PRBRC), William West and Marge West.

4. The three impoundments were previously under the operation of Cedar Ridge LLC. On or about, October 1, 2008, Cedar Ridge LLC purchased the impoundments and CBM wells associated with the impoundments from Wolverine Energy, LLC. Stephens has been the operator of these three impoundments since October 1, 2009.
5. The Wyoming DEQ issued Permit No. 094056 to Cedar Ridge, LLC on May 6, 2009. Cedar Ridge, LLC transferred the assets to Stephens on October 1, 2009. Stephens and Cedar Ridge notified the DEQ and EQC of this transaction. On October 1, 2009, the EQC approved the substitution of Stephens for Cedar Ridge in Docket No. 09-3807.
6. The three impoundments at issue were originally constructed in 2001 and 2002. To my knowledge, there has never been an issue with these impoundments prior to their purchase by Stephens.
7. The Wyoming DEQ authorized discharges into these same impoundments in 2001 under Permit No. WY0045829 (Sept. 28, 2001) and Permit No. WY0046469 (Oct. 9, 2001).
8. Stephens discharges water produced from 37 CBM wells, from the Fort Union coal formation, into the three impoundments described in Permit No. 094056. Stephens does not discharge any water into the Spotted Horse Creek or any ephemeral tributary of Spotted Horse Creek. Stephens contains all water in the three impoundments described in Permit No. 094056.

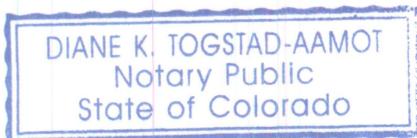
9. To my knowledge, the three impoundments described in Permit No. 094056 have never overtopped, leaked, nor has water breached the impoundment in any way. All discharge water has been fully contained.
10. Either Stephens or its contractors visually inspect the three impoundments on a consistent basis, but no less than once per week. To my knowledge, the weekly observations have produced no evidence of leaks, seeps, overtopping, or any examples of the impoundments not containing all of the water that is discharged into them.
11. Stephens has never applied for an assimilative capacity credit for the Powder River Basin. The DEQ has not granted Stephens an assimilative capacity credit for impoundments at issue in Permit No. WY0094056.
12. The Wyoming DEQ has not found Stephens to be in violation of Permit No. 094056. The DEQ has not sent Stephens a notice of violation regarding any aspect of Permit No. 094056.


Terry L. Logan

Subscribed and sworn to before me by Terry L. Logan on this 9th day of February, 2010.

Witness my hand and official seal.

My commission expires: Oct. 13, 2013



My Commission Expires October 13, 2013


Notary Public

Exhibit 6

Kate M. Fox (Wy. Bar No. 5-2646)
J. Mark Stewart (Wy. Bar No. 6-4121)
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**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF)
POWDER RIVER BASIN RESOURCE) DOCKET NO. 09-3807
COUNCIL, AND WILLIAM F. WEST)
RANCH, LLC FROM WYPDES)
PERMIT NO. WY0094056)

**PETITIONERS' RESPONSES TO STEPHENS ENERGY COMPANY, LLC'S FIRST
COMBINED DISCOVERY REQUESTS**

Petitioners, by and through their undersigned attorneys, Kate M. Fox and J. Mark Stewart of Davis & Cannon, LLP, hereby respond to Stephens Energy Company, LLC's First Combined Discovery Requests, as follows:

REQUESTS FOR ADMISSION

1. The three impoundments are located on private land.

RESPONSE: Deny.

2. Stephens has a surface use agreement with the landowner for its impoundments.

RESPONSE: Deny.

3. The impoundments at issue under Permit No. WY0094056 were originally authorized by the DEQ under Permit Nos. WY0045829 on September 28, 2001, and WY0046469 on October 9, 2001.

RESPONSE: Deny.

4. Stephens' impoundments were constructed in 2001 and 2002 and have been in continual use.

RESPONSE: Petitioners are without knowledge as to whether Stephens impoundments have been in continual use since they were constructed and therefore deny this request for admission.

5. Petitioners have never visually inspected, observed or seen Stephens' three impoundments.

RESPONSE: Deny.

6. Petitioners land is located at least seven miles downstream from Stephens' impoundments.

RESPONSE: Admit that the impoundment associated with Outfall 001 is located closest to the West Ranch and is at least seven miles upstream..

7. There are other CBM impoundments upstream from Petitioners land that are located on ephemeral tributaries of Spotted Horse Creek or feed into or are on Spotted Horse Creek.

RESPONSE: Admit.

8. WYPDES Permit No. WY0094056 does not authorize any intentional discharge of water into any ephemeral tributary of Spotted Horse Creek or into Spotted Horse Creek.

RESPONSE: Admit.

9. If water from Stephens' impoundments never overtopped, breached or seeped from Stephens' impoundments, water from these impoundments would not end up in any ephemeral tributary of Spotted Horse Creek or into Spotted Horse Creek.

RESPONSE: Objection. Without a definition of "seeped" this request for admission is vague. Without waiving this objection, Petitioners admit that if water placed in the impoundments escaped or otherwise left the impoundment only through evaporation, water from the impoundments would not end up in any tributary of Spotted Horse Creek or into Spotted Horse Creek.

10. If water from Stephens' impoundments never overtopped, breached or seeped from Stephens' impoundments, there would be no damage to any of Petitioners land.

RESPONSE: Objection. Without a definition of "seeped" this request for admission is vague. Without waiving this objection, Petitioners admit that if water placed in the impoundments escaped or otherwise left the impoundment only through evaporation water, from the impoundments would not damage Petitioners land.

11. Intentional discharge from any impoundments into any ephemeral stream or tributary would be a violation of Stephens permit and would subject Stephens to enforcement by the DEQ under the permit.

RESPONSE: Objection. This is a compound request. Without waiving this objection, Petitioners admit that intentional discharge from any impoundment would constitute a violation of Stephens' permit. Deny that it would subject Stephens to enforcement by DEQ under the permit.

12. The DEQ has never found Stephens to be in violation of WYPDES Permit No. WY0094056.

RESPONSE: Petitioners are without knowledge as to whether DEQ has ever found Stephens to be in violation of the permit and therefore deny this request for admission.

13. The DEQ has never found that Stephens has discharged any water from its impoundments into any ephemeral stream or tributary of Spotted Horse Creek or into Spotted Horse Creek under WYPDES Permit No. WY0094056.

RESPONSE: Petitioners are without knowledge as to whether DEQ has ever found that Stephens has discharged any water from its impoundments and therefore deny this request for admission.

14. The DEQ has never found that any water from Stephens' impoundments has seeped into any ephemeral stream or tributary of Spotted Horse Creek or into Spotted Horse Creek under WYPDES Permit No. WY0094056.

RESPONSE: Objection. Without a definition of "seeped" this request for admission is vague. Without waiving this objection, Petitioners are without knowledge as to whether DEQ has ever found that water from Stephens' impoundments has escaped or otherwise left the impoundment so as to reach a tributary of Spotted Horse Creek or so as to reach Spotted Horse Creek.

15. Petitioners have never tested the water in Stephens' three impoundments for EC, SAR or any other constituents.

RESPONSE: Admit.

16. Petitioners have no evidence that water from Stephens' three impoundments has been discharged into any ephemeral tributary of Spotted Horse Creek or into Spotted Horse Creek.

RESPONSE: Admit.

17. Petitioners have no evidence that water from Stephens' three impoundments has seeped into any ephemeral tributary of Spotted Horse Creek or into Spotted Horse Creek.

RESPONSE: Objection. Without a definition of "seeped" this request for admission is vague. Without waiving this objection, Petitioners admit they have no evidence that water from

Stephens' impoundments has escaped or otherwise left the impoundment so as to reach a tributary of Spotted Horse Creek or so as to reach Spotted Horse Creek.

18. Petitioners have no evidence that Stephens' three impoundments have ever over topped, leaked, seeped or that water has been released from any of the three impoundments into any ephemeral tributary of Spotted Horse Creek or into Spotted Horse Creek.

RESPONSE: Objection. Without definitions of "leaked" and "seeped" this request for admission is vague. Without waiving this objection, Petitioners admit they have no evidence that water from Stephens' impoundments has escaped or otherwise left the impoundment so as to reach a tributary of Spotted Horse Creek or so as to reach Spotted Horse Creek.

19. Petitioners have no evidence that CBM water discharged specifically from Stephens' impoundments has decreased their agriculture production.

RESPONSE: Admit.

20. Petitioners intentionally irrigate their fields with CBM water.

RESPONSE: Deny.

21. Petitioners have no sampling data, or evidence of any kind on the agriculture production prior to using CBM water to irrigate their fields.

RESPONSE: Deny.

22. Petitioners have no information nor documents nor evidence of any kind which suggests that any CBM water from Stephens' impoundments has ever or will ever reach Petitioners' property.

RESPONSE: Deny.

INTERROGATORIES

1. If you deny any of the requested admissions above in whole or in part, please set forth the specific factual basis for each denial.

RESPONSE: Requests for admissions 4, 12, 13 and 14 are denied on the basis of lack of knowledge. Petitioners reserve the right to amend these responses as discovery progresses.

Request for Admission No. 1 – The Application for Permit to Appropriate Surface Water for the Spellman #54-75-6-11 Stock Reservoir indicates that it inundates approximately 0.7 acres of land owned by the State of Wyoming. Presumably Stephens is in possession of this application.