

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

FEB 23 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

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

Docket No. 09-3807

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S BRIEF IN
OPPOSITION TO PETITIONERS' MOTION FOR SUMMARY JUDGMENT
AND IN SUPPORT OF RESPONDENT STEPHENS ENERGY'S MOTION FOR
SUMMARY JUDGMENT

INTRODUCTION

Respondent Wyoming Department of Environmental Quality (DEQ), respectfully submits this brief in opposition to Petitioners' Motion for Summary Judgment and in support of Stephens Energy Company LLC's Motion for Summary Judgment. Petitioners' motion should be denied because it is based on: (1) a technical report that is irrelevant to the facts of this case; and (2) the erroneous notion that DEQ has the burden of proving a negative--that no measurable decrease in agricultural yields will result from the Stephens permits.

By contrast, Stephens correctly argues that the Petitioners shoulder the burden of proving that they are aggrieved by the agency's action of issuing the permit. Specifically, Petitioners must prove that the Stephens permit will cause a measurable decrease in crop production. Discovery has confirmed that Petitioners have no evidence, through expert testimony or otherwise, with which to carry their burden of proof that the Stephens permit will have any impact on their crop production. Therefore, because there is no genuine issue of material fact on the essential element of Petitioners' case, Stephens is entitled to judgment as a matter of law, and the case must be dismissed.

I. DEQ USED APPROPRIATE SCIENTIFIC METHODS WHEN SETTING THE LIMITS FOR WYPDES PERMIT 0094056

The primary issue in this case is whether the effluent limits and terms in the Stephens permit as issued by DEQ meet the requirements of Wyoming Water Quality Rules and Regulations (WWQRR), Chapter 1, Section 20, which requires DEQ to establish effluent limits that are protective of agriculture and ensure that there will not be a measurable decrease in crop or livestock production. DEQ may employ one of several approaches when setting limits in coal bed methane discharge permits. DEQ may allow water to be discharged if it is of similar quality to what has historically flowed down a stream because water of such water quality should not impact crop production. In establishing the limits for this Stephens permit, DEQ analyzed soil samples from fields and meadows located downstream of the discharge on Spotted Horse Creek in order to determine the historic background water quality. (See Ex. 1, to Petr.'s Br. WYPDES Permit # WY 0094056 (Permit), 2). Through this "Tier 2" process, DEQ set the limit of 2,680 EC for the Stephens permit. (Permit 2).

Besides the effluent limits in the Stephens permit, DEQ imposed additional conditions to prevent impacts to agricultural production in the Spotted Horse Creek drainage. DEQ required Stephens to contain all discharged effluent in reservoirs with certain limited exceptions. (Permit 3). The establishment of 2,680 EC in conjunction with the "containment requirement" prevents impacts to Petitioners' crop production because the Stephens discharges will not reach Petitioners' land.

A. The Hendrickx and Buchanan Report is Irrelevant to the Stephens Permit

Petitioners argue that the May 2009 Hendrickx and Buchanan Report identifies problems with the Tier 2 methodology and therefore any permit to which DEQ applied the Tier 2 analysis cannot be issued. (Petr.'s Br. 9). This argument must be rejected because the Hendrickx and Buchanan critiques of the Tier 2 methodology are irrelevant to the circumstances of the Stephens permit,

specifically because the critiques do not apply if the discharged water is contained and only could reach downstream crops under non-threatening circumstances. Petitioners admit they have no evidence that the Stephens permit will allow the discharges to reach their land where it could have an effect on their crops, which is the true issue in this case. (See Ex. 2 to Stephens Br., W. West Depo. 37:12-15; Ex. 1 to Stephens Br., M. West Depo. 36:2-13.)

Hendrickx and Buchanan prepared their report to address specific questions asked by the Council. The Council asked the “[w]hether the Tier 2 methodology ... is reasonable and scientifically valid for determining the EC and SAR of water that can be discharged into an ephemeral drainages in Wyoming [.]” (Hendrickx and Buchanan, Expert Scientific Opinion on the Tier 2 Methodology – Report to the Wyoming Environmental Quality Council, May 2009¹, 2 (Report)). The Council did not ask Hendrickx and Buchanan to address discharges into reservoirs on ephemeral drainages. Consistent with their task, Hendrickx and Buchanan criticized the Tier 2 approach for two reasons: (1) Tier 2 does not factor in quantity of water; and (2) Tier 2 does not provide a uniform testing procedure to calculate the historic water quality in the ephemeral drainage. (Report 21 – 22.) Hendrickx and Buchanan did not provide any scientific analysis of impacts to ephemeral drainages or irrigated lands from water stored in reservoirs. They did not consider how water stored in reservoirs might reach downstream lands, might be filtered or diluted if leaked or released, or might be chemically altered while in storage. If Hendrickx and Buchanan had been asked to respond to the question of whether and when the use of reservoirs would be reasonable and scientifically valid to protect downstream agriculture, and had answered that question, their report might have some relevance here. However, they did not, so Petitioners’ reliance on their report is meaningless.

¹ Petitioners refer to this report in their Petition and Motion for Summary Judgment. This report is available on the Council’s website at: <http://deq.state.wy.us/eqc/index.asp>

If anything, the Hendrickx and Buchanan analysis actually supports DEQ's requirement that the Stephens discharges be contained. One of the main themes of the report is that discharged waters should be managed. "[T]o realize the potential benefits of CBM water it is necessary to manage both water quality and water quantity on the artificially and naturally irrigated lands receiving this water." (Report 19). DEQ's permit issued to Stephens states: "The permittee is required to contain all effluent from the outfalls in the on-channel reservoir(s) at this facility." (Permit 1). The Stephens permit provides two conditions under which the reservoirs may release the contained water. The first requires DEQ written authorization in association with the use of assimilative capacity credits for the Powder River Basin. (Permit 2). However, in the absence of DEQ written authorization, DEQ requires containment of the waters during all dry operating conditions. (Permit 2). The Stephens permit does contemplate that large storm events could cause the reservoir to overtop. However, these overtopping events are limited to only natural overtopping and are restricted to a 48 hour period. (Permit 2). All of these containment requirements fit the Hendrickx and Buchanan theme of managing water and would support the issuance of the Stephens permit.

Furthermore, Petitioners' expert witness, Dr. Ginger Paige, admitted in deposition that the Hendrickx and Buchanan Report did not address circumstances similar to those that surrounded the Stephens permit:

Question: A couple of quick questions on the Hendrickx Buchanan report. Would you agree that this report did not address the issue or the full containment of reservoirs but only the direct discharge of waters into ephemeral streams or tributaries?

Answer: I believe it was actually addressing discharge on surface water, and not containment or full containment.

(See Ex. 4 of Stephens Br., Dr. Paige Depo. 25:3-9).

In summary, the Hendrickx and Buchanan Report is irrelevant to the Stephens permit because it does not address or contemplate the containment of discharged water, which is required in the Stephens permit. The Hendrickx and

Buchanan Report actually supports DEQ's requirement that Stephens' discharges be contained. Since Petitioners' argument for summary judgment is based on an irrelevant report, Petitioners' Motion should be denied.

B. DEQ Established an SAR Limit In Instances Where SAR May Impact Downstream Agriculture

Petitioners also argue that the Stephens permit does not contain an SAR limit and therefore cannot be issued. (Petr.'s Br. 10). This argument overlooks the clear language in the permit that imposes an SAR monitoring requirement, a discretionary provision allowing DEQ to re-open the permit and apply an SAR limit, and an automatic SAR limit if it is shown that water is escaping the reservoirs at a level that may be damaging to agriculture. The Stephens permit requires daily monitoring below the reservoirs to determine whether effluent reaches the irrigation monitoring point (IMP). (Permit 3). DEQ collects and continuously evaluates data at the IMP to assure that any release from the reservoirs from either overtopping or from a permitted release conforms to the following formula: $SAR < 6.67 \times EC - 3.33$. (Permit 3). If the samples show that water from the reservoirs exceed this formula, the automatic SAR limit is triggered and DEQ will add an effluent limit at each of the outfalls. (Permit 3). DEQ also retains the standard re-opener provision for any case where DEQ might choose to re-open and modify the permit to include an SAR effluent limit at the outfall, even short of three exceedences per year (in the case of a very high single exceedence for example). (Ex. 1, Jason Thomas Aff., ¶11).

Petitioners' concerns regarding the quality of water released from the reservoirs in association with assimilative capacity credits or during storm events are also unfounded. Prior to DEQ authorizing any release from reservoirs pursuant to the assimilative capacity credits of the Powder River Basin, DEQ requires the permittee to sample the quality of the water in the reservoir in order to assure that the water quality does not exceed the effluent limits established in the individual permit. (Ex. 2, *Powder River Basin Reservoir Release Request and*

Report Form). If the reservoir water quality exceeds either the EC or SAR limits of the permit, DEQ will not authorize any reservoir release. (Ex. 2).

DEQ has also conducted studies to evaluate the potential quality of any water resulting from the overtopping of the reservoirs. Based on DEQ data from instream IMP and irrigation compliance point (ICP) locations, DEQ determined that an SAR limit at the Stephens outfalls were not necessary. (Ex. 1, ¶ 6). The data indicates that the vast majority of the water reaching IMP/ICP locations after overtopping will be compliant with the commonly used Hanson chart. (Ex. 1, ¶ 7). Moreover, as mentioned above, DEQ has required ongoing monitoring at the IMP to confirm its expectation that any overtopping will meet the SAR threshold. Petitioners' argument overlooks the monitoring requirements and automatic limit if it is shown that water is escaping the reservoirs at a level that may be damaging to agriculture and therefore should be denied.

II. THE COUNCIL SHOULD DENY PETITIONERS' MOTION AND GRANT STEPHENS' MOTION BECAUSE PETITIONERS CANNOT CARRY THE BURDEN OF PROVING THE PERMIT WOULD VIOLATE CHAPTER 1, SECTION 20.

A. The Burden of Proving Arbitrary Administrative Action is on the Petitioners

Petitioners argue that DEQ and Stephens are the "proponents of the order" and therefore DEQ has the burden to show that "discharges made under the [Stephens] Permit will not result in a measurable decrease in crop production." (Petr.'s Br. 15). This argument is contrary to established case law. When DEQ issues a permit, it is assumed that the permit is in accordance with the rules and regulations. This is the reason why if the permit is not appealed, the permit is issued and no administrative review is conducted. When an appeal does occur, it is the burden of those challenging agency actions to show that the contested permit was not done in accordance with the regulations.

"It is well settled that in proceedings before commissions, as in courts, the burden of proof rests upon complainants." *Application of Chicago & N. W. Ry.*

Co., 334 P.2d 519, 521 (Wyo. 1959). “The burden of proving a lack of substantial evidence is upon the party appealing the agency’s determination.” *Mountain Fuel Supply Co., v. Public Serv. Comm’n of Wyoming*, 662 P.2d 878, 883 (Wyo. 1983). The burden to demonstrate that the agency's findings and conclusions are not supported by substantial evidence is on the appellant. *Gonzales v. State ex rel. Wyoming Workers' Compensation Div.*, 970 P.2d 865, 869 (Wyo. 1998). The burden of proving arbitrary administrative action is on the complainant, and this burden includes placement of evidence in the record to sustain the complainant's position. *Knight v. Environmental Quality Council*, 805 p.2d 268, 273 (Wyo. 1991).

Petitioners cite the case of *J.M. v. Dep’t of Family Servs.*, 922 P.2d 219, (Wyo. 1996) to support their assertion that DEQ has the burden to prove that the permit will have no impact on crop production. (Petr.’s Br. 14). *J.M.*, however, is completely distinguishable from the case at hand. In *J.M.*, a father was challenging a decision by the Department of Family Services to place his name on a registry of people who were subject to child abuse complaints. *J.M.*, 922 P.2d 220. The agency action was in the nature of a prosecution, enforcement, or penalty action. Thus the agency was the proponent of the order and had the burden of substantiating its allegations of child abuse against the father. *Id.* at 222.

This is different from the current situation where DEQ has issued a permit to an applicant and a third party appeals that decision. When DEQ takes enforcement actions it has the burden of showing a violation, but the issuance of a permit is not the issuance of an order as in an enforcement case. In fact, the Environmental Quality Act (Act) has separate provisions for permits and orders. WYO. STAT. ANN. § 35-11-801 provides for DEQ’s issuance of permits and WYO. STAT. ANN. § 35-11-701(c)(i)&(ii) addresses DEQ’s issuance of orders. The Act provides ten (10) days to appeal an order while the DEQ Rules of Practice and Procedure (Rules) allows for sixty (60) days to appeal a permit. WYO. STAT. ANN.

§ 35-11-701(c)(ii); Rules Chapter 1, Section 16(a). Petitioners appealed the issuance of this permit on July 2, 2009 more than fifty (50) days after the issuance of the permit on May 6, 2009. If this was an order, as suggested by Petitioners, they would be time barred from bringing this appeal. However, DEQ did not issue any order. DEQ merely issued a permit which authorizes a private party to conduct an activity based on DEQ's initial determination that the permit will meet the applicable statutes and regulations. It is the burden of a party challenging such agency determination to prove otherwise.

Petitioners also point to WYO. STAT. ANN. § 35-11-801(a) to support their assertion that they do not bear the burden of proving to the Council that the permit will not comply with Ch. 1, § 20. (Petr.'s Br. 15-16). This statute, however, does not support their argument. WYO. STAT. ANN. § 35-11-801(a) requires any applicant for a permit to prove to the director of DEQ that the rules and regulations have been satisfied. Once the applicant has satisfied the director of such compliance, DEQ may issue the permit. The burden on the applicant has been satisfied when DEQ determines that the applicant has met the requirements of the Act. A challenge to that agency determination would require the objecting party to show that the agency determination was improper. "The burden of proving a lack of substantial evidence is upon the party appealing the agency's determination." *Mountain Fuel Supply Co., v. Public Serv. Comm'n of Wyoming*, 662 P.2d 878, 883 (Wyo. 1983).

B. Petitioners Cannot Carry the Burden of Proving the Essential Elements of Their Claim So Summary Judgment Should be Granted for Stephens

This is a contested case hearing. Contested cases before the Council are trial like and require the complaining parties to provide evidence to prove the elements of their claim. If during a contested case, a complaining party provides evidence to the Council and satisfies its burden to show that the limits in a permit are not protective, the Council may modify the permit to include conditions or

limits that will be protective.² WYO. STAT. ANN. §§ 35-11-112(a)(iii); 35-11-112(c)(ii). In this case, the Petitioners are the complaining party and must provide evidence to prove the elements of their claim that DEQ did not properly issue the Stephens permit. Petitioners are seeking affirmative relief in the form of revoking the issuance of the permit, but there must be some basis for the Council to revoke the permit. Petitioners allege that the Stephens 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 . . . in violation of Chapter 1, Sec. 20.” (Petr.’s Petition, ¶ 3p). However, Petitioners must provide evidence to support this allegation.

As Stephens points out in its brief, Petitioners and Petitioners’ expert all admit that they have no evidence about the reservoirs in question, no evidence to support their allegations that the reservoirs leak, and no evidence that this permit will have any impact on Petitioners’ crop production, the ultimate issue before the Council in this case. (Stephens Energy LLC’s Respondent’s Motion to Dismiss Petitioners’ Appeal and Motion for Summary Judgment at 14 – 15, 17). Furthermore, under the Council’s September 16, 2009 Scheduling Order, Petitioners may not present new experts. The deadline for discovery has passed. The deadline to designate expert witnesses has passed. Since, as a matter of undisputed fact, Petitioners cannot prove the ultimate issue of crop impact, the Council should grant summary judgment in favor of Stephens.

Furthermore, if Petitioners believe the reservoirs are leaking and entering the Spotted Horse Creek drainage, the proper course would be for Petitioners to alert DEQ and request an inspection of the reservoirs. The Stephens permit contains the requirement that all effluent be contained in the reservoirs. If it is

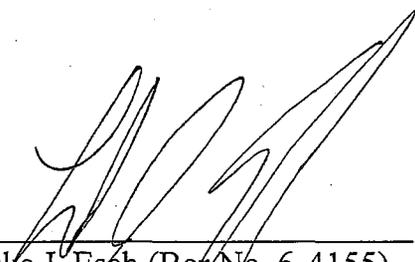
² Petitioners also make the argument that “the Council can only approve or disapprove the permit as written by the DEQ.” (Petr.’s Br. 14). This ignores the clear statutory language to the contrary which states “the Council may . . . order that any permit, license, certification or variance be granted, denied, suspended, revoked, or modified.” WYO. STAT. ANN. § 35-11-112(c)(ii). The legislature thus expressly authorized the Council to hear new evidence and modify permits.

found that the reservoirs are leaking, that would be a violation of the permit and would support an enforcement case by DEQ.

CONCLUSION

The crux of this case is whether the effluent limits and other terms in the Stephens permit meet the requirements of Chapter 1, Section 20. The Council should remain focused on this issue. DEQ established protective effluent limits and went one step further and required that discharges that meet those effluent limits be contained in reservoirs to assure that the Stephens permit would meet the requirements of Chapter 1, Section 20. Since Petitioners cannot carry their burden of proof, Stephens is entitled to judgment as a matter of law and the Council should deny Petitioners' Motion and grant summary judgment in favor of Stephens.

DATED this 23 day of February, 2010.



Luke J. Esch (Bar No. 6-4155)
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CERTIFICATE OF SERVICE

This certifies that true and correct copies of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S BRIEF IN OPPOSITION TO PETITIONERS' MOTION FOR SUMMARY JUDGMENT AND IN SUPPORT OF RESPONDENT STEPHENS ENERGY'S MOTION FOR SUMMARY JUDGMENT was served this 23rd day of February, 2010 by United States mail, postage prepaid and also by e-mail or facsimile transmission, addressed as follows:

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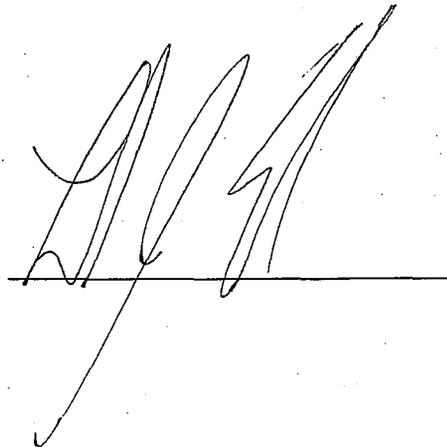
A handwritten signature in black ink, appearing to be 'M. Wozniak', is written over a horizontal line. The signature is stylized and cursive.

Exhibit 1

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

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

AFFIDAVIT OF JASON THOMAS IN SUPPORT OF THE
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S BRIEF IN
OPPOSITION TO PETITIONERS' MOTION FOR SUMMARY JUDGMENT AND IN
SUPPORT OF RESPONDENT STEPHENS ENERGY'S MOTION FOR SUMMARY
JUDGMENT

Jason Thomas, being first duly sworn, deposes and says as follows:

1. I am over the age of 21 and am competent to make this affidavit.
2. The facts and matters stated herein are within my personal knowledge, and are true and correct.
3. I am employed with the Wyoming Department of Environmental Quality Water Quality Division where I am an Environmental Manager of the coal bed methane (CBM) permitting program. I have held this position for approximately 8 years.
4. I was involved with the issuance and establishment of effluent limits for WYPDES permit WY0094056 to Cedar Ridge, LLC on May 6, 2009.
5. In the case of WYPDES permit WY0094056, DEQ did not impose an end-of-pipe limit for SAR. Instead, DEQ required the permittee to contain all discharges in reservoirs and monitor any release from the reservoir for SAR.
6. For permits where containment of discharges is required, DEQ does not generally put an SAR limit at the outfall. Based on our past data from instream irrigation

monitoring points (IMP) and irrigation compliance points (ICP) locations below these types of reservoirs, DEQ has determined that an SAR limit at the outfall above a reservoir is generally not necessary.

7. DEQ data indicates that the vast majority (95+ %) of the water reaching IMP/ICP locations after overtopping falls within the protective range for water quality on the Hanson chart for SAR.

8. This data serves as our reasonable potential analysis under the federal regulations because it takes into account other sources of the pollutant, variability of the pollutant in the effluent, and available dilution.

9. Coupled with our reliance on the past DEQ data, DEQ requires ongoing monitoring at the IMP's to confirm that our assumptions are still valid and that the SAR is in compliance with the Hanson chart upon overtopping.

10. The requirement includes a provision for an automatic assignment of an SAR effluent limit at the outfall in the event that the SAR at the IMP shows a pattern of non-compliance. DEQ would impose this requirement if the monitoring data showed three (3) exceedences in a year.

11. DEQ also retains the standard re-opener provision for any case where DEQ might choose to re-open and modify the permit to include an SAR effluent limit at the outfall, even short of three exceedences per year (in the case of a very high single exceedence for example).

Dated this 19th day of February, 2010.

Jason Thomas

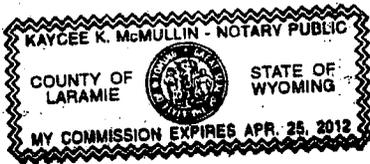
Jason Thomas

TITLE: CBM Permitting Supervisor

STATE OF WYOMING)
)ss.
County of Laramie)

Subscribed and sworn before me by Jason Thomas on this 19th day of February, 2010.

Witness my hand and official seal.



Kaycee K. McMullin
Notary Public

My commission expires: 4/25/12

Exhibit 2

Instructions for Completing the Reservoir Release Request and Report Form

- 1) Part I of the form must be completed and submitted to the WDEQ at least 14 days prior to the anticipated commencement date of the reservoir release.
- 2) Samples from within each of the reservoirs requested for planned reservoir releases in this request form must be collected and analyzed for all constituents listed in the form at a maximum of 45 days prior to submittal of this form to the WDEQ.
- 3) Samples from within each of the reservoirs requested for planned reservoir releases in this request form must be collected and analyzed for all constituents listed in the form at a maximum of 60 days prior to the requested reservoir release commencement date.
- 4) Reservoirs will be limited to a one-time release not to exceed 7 days per month per reservoir. If the requested reservoir release period exceeds 7 days for any individual reservoir, the request will be considered technically inadequate and **MAY BE RETURNED**. Reservoir releases **CANNOT** commence until the operator has received a signed authorization from the WDEQ.
- 5) Reservoir releases **WILL NOT** be approved unless the following conditions are met:
 - A) Operators must possess sufficient unused total dissolved solids (TDS) and dissolved sodium assimilative capacity allocations (as determined by the Powder River Assimilative Capacity Allocation and Control Process) to offset the estimated TDS and dissolved sodium load from the requested reservoir releases. If insufficient unused TDS and dissolved sodium assimilative capacity allocations exist, the reservoir release request(s) will be **DENIED**.
 - B) The individual or general permits authorizing discharges into the reservoir(s) proposed for release must allow for intentional reservoir releases. Please review all individual and general permits associated with the reservoir(s) being proposed for reservoir release. If the individual or general permits in question only allow for overtopping during storm events, planned reservoir releases **WILL NOT** be approved. In order to authorize planned reservoir releases from reservoir(s) only authorized to discharge during storm events, the individual and/or general permits authorizing discharges into the reservoir(s) must be modified prior to any planned reservoir release.
 - C) Should the individual or general permits authorizing discharges into the reservoir(s) proposed for release establish electrical conductivity (EC) and/or sodium adsorption ratio (SAR) effluent limits protective of downstream uses (primarily agricultural uses), the water quality within the reservoir(s) **CANNOT** exceed the EC and/or SAR limits established within any of the associated individual or general permits. Should the reservoir water quality exceed either the SAR or the EC effluent limits established within the associated individual or general permits, planned reservoir release requests **WILL NOT** be approved.
 - D) Operators must submit complete and technically adequate reservoir release request forms. Incomplete and/or technically inadequate request forms may be returned to the operator for correction/completion.
- 6) Operators must monitor the volume of water discharged during the reservoir release period as specified in the reservoir release authorization. In order to do so, operators will be required to have an accurate method of monitoring and reporting reservoir release volumes, which may require the installation of some type of flow monitoring device prior to commencement of the discharge.
- 7) Once the reservoir release is completed, operators are required to complete and submit Part II of this form within 30 days.
- 8) To apply for a reservoir release, and to submit reservoir release forms, operators must complete one of the following options:

Mail one hard copy and one electronic copy (via CD or floppy diskette) to:

WYPDES Permits Section
Department of Environmental Quality/WQD
122 West 25th Street, Herschler Building, 4W
Cheyenne, WY 82002

OR

In order to reduce request processing times, operators may submit Reservoir Release Request Forms via e-mail at the following address.

WYPDES@state.wy.us

When submitting requests via e-mail, laboratory data sheets must be scanned and attached to e-mail or converted to .pdf format and attached to e-mail. In addition, operators are also required to submit one signed hard copy via regular mail (see address under mailing instructions) for filing.

- 9) The WYPDES Program recommends the use of the "return receipt" or "status tracking" functions when sending requests via e-mail to ensure delivery.
- 10) To more efficiently track reservoir release submittals, please complete the page footers with the following information: Company/WYPDES Permit Number(s)/WYPDES Outfall Number(s)/Reservoir Name(s)/Submittal Date. Please also include this information on any attachments.

Company/WYPDES Permit Number/WYPDES Outfall Number/Reservoir Name
Submittal Date

For Agency Use Only

Date Received: (mo/day/yr)

Assigned Release Number

SUBMIT ONE HARD COPY AND ONE ELECTRONIC COPY

WYOMING POLLUTANT DISCHARGE ELIMINATION SYSTEM
POWDER RIVER BASIN RESERVOIR RELEASE REQUEST AND REPORT
FORM

PART I

1) Contact information

Operator/Company requesting reservoir release:

Name of person to contact regarding request:

Address:

Phone:

E-mail:

2) Do the individual or general WYPDES Permits listed in Item #3 allow for reservoir releases other than reservoir overtopping during storm events?

YES

NO

If NO, reservoir releases CANNOT be approved until the associated permits have been modified to allow for use of assimilative capacity and intentional reservoir releases.

3) A. Reservoir information (add more rows if needed):

WYPDES Permit #	Associated Outfall(s)	Reservoir Name	Reservoir Latitude* (Decimal Degrees)	Reservoir Longitude* (Decimal Degrees)	Immediate Receiving Stream and Drainage (for example, unnamed tributary to Wild Horse Creek)

*Coordinates should be collected at the center of reservoir dam.

B. Requested reservoir release water quality and discharge volume (add more rows if needed):

Reservoir Name	Release Volume Requested	Reservoir Release Volume Requested* (units)	Reservoir Total Dissolved Solids (mg/l)	Reservoir Dissolved Sodium (mg/l)	Reservoir Electrical Conductivity (µmohs/cm)	Reservoir SAR	Month during which discharge will occur	Total Number of Days for Reservoir Release**	Dates of release mm/dd/yy through mm/dd/yy

*Requested release volumes may also be expressed as one of the following: volume per day as millions of gallons (MGD), total reservoir volume or total release volume in millions of gallons (MG).

**Reservoir release duration is limited to 7 days per month per reservoir. If the requested reservoir release period exceeds 7 days for any individual reservoir, the request will be considered technically inadequate and may be returned to the company requesting the release.

To calculate assimilative capacity unit usage, the following formula will apply:

$$[(V \times C_{di}) - (V \times C_{pr})] \times D_{tot} \times 8.34 \text{ (lb/MG)/(mg/l)} = \text{Assimilative Capacity Unit Usage}$$

WHERE:

V = volume, in million gallons per day (MGD), discharged from the reservoir for the given month

C_{di} = concentration, in mg/l, of TDS or dissolved sodium in the discharge

C_{pr} = average ambient Powder River concentration of TDS or dissolved sodium, in mg/l, for the month during which discharge will occur (ambient concentration values have been pre-determined by the WDEQ using USGS water quality data)

D_{tot} = reservoir release duration, in days

8.34 (lb/MG)/(mg/l) is a conversion factor to convert mg to pounds in the equation

Assimilative Capacity Unit Usage = the number of assimilative capacity units to be utilized by the reservoir release during a given month (1 unit = 1 pound of TDS or dissolved sodium)

4) Do the any of the WYPDES permits associated with discharges into the reservoir(s) for which releases are being requested include SAR and/or EC limits protective of downstream irrigation uses?

YES NO

If yes, what SAR and/or EC limits are established in the WYPDES Permits (add additional lines if needed)?

WYPDES Permit #	Associated Reservoir Name	SAR limit	EC limit (μmohs/cm)

Please note that if the SAR and/or EC concentrations within the reservoir (see item #3) are greater than the SAR and/or EC limits established within the associated WYPDES permits, releases from the reservoir(s) listed in item #3 WILL NOT be approved.

5) Describe method(s) used to monitor the volume of water being discharged from the reservoir(s).

6) Describe how discharge(s) will be managed to prevent erosion.

7) Attach water quality lab sheet for each reservoir included in this request.

Lab sheet must include reservoir name, associated WYPDES Permit and outfall number(s), sample date, analysis date, SAR (calculated as unadjusted for bicarbonate ratio), electrical conductivity (μmohs/cm), dissolved sodium concentration (mg/l), and total dissolved solids concentration (mg/l). Samples must be representative of the water quality within the reservoir(s) proposed for release, and CANNOT originate from the outfall(s) associated with the reservoir(s).

8) Printed name of authorized representative:

Signature of authorized representative

Date: _____

All reports and reservoir release requests must be signed in accordance with *Section 14, Chapter 2 of the Wyoming Water Quality Rules and Regulations*, “for” or “by” signatures are not acceptable.

Section 35-11-901 of Wyoming Statutes provides that:

Any person who knowingly makes any false statement, representation, or certification in any application ... shall upon conviction be fined not more than \$10,000 or imprisoned for not more than one year, or both. Permittees are required to retain records of all data used to complete permit applications in accordance with *Chapter 2, Section 5, Part 5.V.vii of the Wyoming Water Quality Rules and Regulations*.

PART II

1) Contact information

Operator/Company reporting reservoir release: _____

Name of person to contact regarding release: _____

Address: _____

Phone: _____

E-mail: _____

2) Reservoir Release Information (add more rows if needed):

Reservoir Release Authorization Number*	WYPDES Permit #	Associated Outfall(s)	Reservoir Name	Actual Number of Release Days	Actual Release Begin Date	Actual Release End Date	Actual Release Volume	Actual Release Volume Units** (MGD or MG)

* From Reservoir Release Authorization

**Requested release volumes may also be expressed as one of the following: volume per day as millions of gallons (MGD), total reservoir volume or total release volume in millions of gallons (MG).

3) Describe method(s) used to monitor the volume of water being discharged from the reservoir(s).

4) Printed name of authorized representative:

Signature of authorized representative

Date: _____

All reports and reservoir release requests must be signed in accordance with *Section 14, Chapter 2 of the Wyoming Water Quality Rules and Regulations*, "for" or "by" signatures are not acceptable.

Section 35-11-901 of Wyoming Statutes provides that:

Any person who knowingly makes any false statement, representation, or certification in any application ... shall upon conviction be fined not more than \$10,000 or imprisoned for not more than one year, or both. Permittees are required to retain records of all data used to complete permit applications in accordance with *Chapter 2, Section 5, Part 5.V.vii of the Wyoming Water Quality Rules and Regulations*.