

OCT 27 2005

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

Terri A. Lorenzon, Director
Environmental Quality Council

In the Matter of the Appeal)	
Of Permit No. WY0051772)	Docket No.
Fidelity Exploration)	
& Production Co.)	

PETITION FOR REVIEW OF PERMIT NO WY0051772

Fidelity Exploration & Production Co. (Fidelity), Petitions the Wyoming Environmental Quality Council (Council) to review Permit No. WY0051772, issued on August 29, 2005, by the Department of Environmental Quality (DEQ), Water Quality Division (WQD), for Fidelity's Wrench Ranch 49 battery. This permit, which authorizes the discharge of a limited volume of produced water from coalbed natural gas wells into an existing reservoir used for irrigation, differs significantly from the draft permit proposed in March 2005. Fidelity seeks modification of the permit to remove the conditions added by the DEQ/WQD in the final permit. The new conditions are outside the scope of the agency's authority and are unnecessary for the protection of water quality. In accordance with Chapter I, Section 3(c), Department of Environmental Quality Rules of Practice and Procedure, Fidelity provides the following in support of their petition for review and request for hearing:

1. The name and address of the Petitioner is Fidelity Exploration & Production Co., 1700 Lincoln Street, Suite 4600, Denver, CO 80202. Michael L. Bergstrom is the Environmental Manager for Fidelity. Legal Counsel for Fidelity is Mary A. Throne, Hickey & Evans, 1800 Carey Avenue, Suite 700, P.O. Box 467, Cheyenne, WY 82003-0467.
2. Under the Wyoming Environmental Quality Act (the Act), Wyo. Stat. § 35-11-112(a)(iv), the Council has the authority to conduct hearings in any case contesting a permit issued by the DEQ/WQD. Wyo. Stat. § 35-11-112(c)(iii) provides that the Council may order the modification of any permit.

3. DEQ/WQD issued Permit No. WY0051772 (attached with Statement of Basis) to Fidelity authorizing the discharge of produced water to the Windy Draw Reservoir, an existing channel, Class 3B reservoir located on an ephemeral tributary of Goose Creek in Sheridan County, Wyoming. Under the permit, the produced water would mix with water in Windy Draw Reservoir, providing a supplemental source of irrigation water for the landowner. The large capacity of the Windy Draw Reservoir, 1039 acre/feet, allows for substantial mixing of the coalbed produced water with surface water. The mixing analysis submitted by Fidelity, according to the Statement of Basis for the permit, indicated that the mixed water quality in the reservoir would have an EC of between 767 and 883 micromohs/cm, and SAR of between .98 and 1.94, "well within the 'no reduction to infiltration' range," citing the U.S. Department of Agriculture Handbook, No. 60, 1954. The permit, in draft and final form, also provides for an Irrigation Monitoring Point (IMP) at the outlet of Windy Draw Reservoir. The reservoir discharges into a series of irrigation ditches.

4. The final permit includes four new conditions: 1) Part I.A.I. which prohibits the discharge of effluent to Goose Creek; 2) Part I.A.2.c (Irrigation Monitoring Point) requiring year round monitoring rather than monitoring during the irrigation season; 3) Part I.A.2.d (Water quality monitoring stations), also requiring year round rather than seasonal monitoring; and 4) Part 1.C which requires groundwater monitoring for reservoirs holding coalbed produced water.

5. The first three permit additions described in Paragraph 4 above all relate to the use of the Windy Draw Reservoir water for irrigation purposes. Fidelity, working with the landowner, has structured its discharge to allow the landowner to utilize

the coalbed water in his existing irrigation operation. The draft permit contained adequate conditions to insure that the quality of the mixed water in Windy Draw Reservoir was appropriate for the landowner's irrigation uses. The additional conditions in the final permit are unnecessary to establish that the water is suitable for the landowner's intended irrigation uses. In particular, the new prohibition against discharge of effluent to Goose Creek is simply not workable and exceeds WQD's authority. Fidelity is discharging into the Windy Draw Reservoir and once the landowner utilizes the water, Fidelity has no control over the mixed water and whether or not it reaches Goose Creek. Thus, this condition is not workable or applicable to the facility as planned. The WQD also lacks authority over the landowner's irrigation practices. See *Wyo. Stat. § 35-11-1104(iii)*. Second, the year round monitoring is unnecessary for the uses of the water intended by the landowner. Monitoring during the irrigation season, as proposed in the draft permit, was adequate to protect agricultural uses.

6. The groundwater monitoring condition was added without explanation and precludes Fidelity from using the permit until a groundwater monitoring plan is approved. There is no explanation of the rationale for this new permit condition or its application to an existing reservoir. The only authority cited in the permit is a WQD guidance document, rather than a regulatory requirement. Under the permit, Fidelity is not discharging into a CBM impoundment, but into existing "waters of the state." The permit requires Fidelity to meet water quality standards prior to discharge into the reservoir and additional groundwater monitoring is not required under the WYPDES regulations or the Environmental Quality Act.

7. Fidelity worked closely with the landowner to develop a

management plan for its coalbed water that would allow the landowner to take advantage of the water for his ranching operations while at the same time being fully protective of water quality. WQD's addition of new permit conditions that are both unnecessary and outside the scope of its authority has made the new permit unworkable for the landowner and Fidelity. For this reason, Fidelity respectfully requests that the Council order the DEQ/WQD to modify the permit and reissue it as originally proposed on March 9, 2005.

DATED this 27th day of October, 2005.

Mary A. Throne

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ATTORNEYS FOR FIDELITY EXPLORATION
& PRODUCTION COMPANY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this 27th day of October 2004, in accordance with the requirements of Chapter 1, Section 3(b) of the Department of Environmental Quality Rules of Practice and Procedure, this Petition for Review was served as follows:

Two copies were served upon the Chairman of the Environmental Quality Council, Herschler Building, Cheyenne, 1st Floor West, WY 82002, by certified mail, return receipt requested.

Two copies were served upon John Corra, Director of the Department of Environmental Quality, Herschler Building,

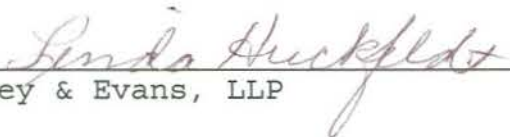
Cheyenne, WY 82002, by certified mail, return receipt requested.

Copies of the Petition for Review were served by hand
delivery to the following:

Environmental Quality Council
Herschler Building, 1st Floor West
Cheyenne, WY 82002

Michael Barrash
Senior Assistant Attorney General
Natural Resources Division
Herschler Building, 2nd Floor
Cheyenne, WY 82002

John Wagner
Administrator
Water Quality Division
Herschler Building
Cheyenne, WY 82002


Hickey & Evans, LLP