

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

FILED

SEP 01 2005

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL)
OF WILLIAM P. MAYCOCK)
FROM WYPDES PERMIT NO. WY0053171)

Docket No. 05-3803

PETITION

William P. Maycock petitions the Environmental Quality Council of the State of Wyoming as follows:

1. Name and Address of Protestant and Protestant's Attorney. The name and address of the Protestant is William P. Maycock, P. O. Box 836, Gillette, WY 82716-0836. The name and address of the Protestant's attorney is Tom C. Toner, Yankee & Toner, LLP, P. O. Box 6288, Sheridan, WY 82801.

2. Action Upon Which Hearing Is Requested. This is an appeal from the issuance of WYPDES Permit No. WY0053171 by the Administrator of the Water Quality Division of the Department of Environmental Quality to Williams Production RMT Company.

3. Statement of Facts.

a. William P. Maycock ("Maycock") is the owner of a ranch on a drainage known as Barber Creek in Campbell County, Wyoming.

b. On July 5, 2005, the Administrator of the Water Quality Division of the Department of Environmental Quality issued WYPDES Permit No. WY0053171 to Williams Production RMT Company (the "Permit")

c. This permit authorizes Williams to discharge water produced from wells located adjacent to and up gradient from Mr. Maycock's ranch into on-channel reservoirs within the Barber Creek watershed which the permit identifies as a tributary of the Powder River.

d. These on-channel reservoirs are located up drainage from the Maycock Ranch, and any water discharged from the on-channel reservoirs will be discharged onto the Maycock Ranch.

e. The water that Williams proposes to discharge from the on-channel reservoirs will cross the Maycock ranch for several miles. The Barber Creek drainage on the Maycock ranch has areas of relatively steep gradient, and continuous flow of water onto Mr. Maycock's ranch will exacerbate erosion and head cutting and cause the loss of

riparian grazing land.

f. The water will pass through the bottom lands on the Maycock ranch where there are large, flat meadow areas with no stream bed, banks or defined channel of any kind. These areas serve as important grazing pastures for Mr. Maycock's cattle to graze dry land grasses each year.

g. The soil on Mr. Maycock's ranch where Williams proposes to discharge water is highly erodible.

h. There are no perennial stream flows in the Barber Creek Drainage on Mr. Maycock's ranch.

i. The Statement of Basis for the permit says that in the judgment of the Water Quality Division of the Department of Environmental Quality, the EPA Effluent Guidelines and Standards for Oil and Gas Extraction Point Source Category (Part 435, Subpart E) is appropriately applied to coal bed methane gas production. 40 C.F.R. Part 435 Subpart E requires that the permittee document agricultural and wildlife uses of produced water and directs that documentation be provided that produced water will be used for agriculture or wildlife during periods of discharge. The Permit does not require that the produced water be used for agriculture or wildlife during periods of discharge in violation of 40 C.F.R. Part 435 Subpart E. The Permit does not require that the produced water have use in agriculture or wildlife propagation and actually be put to such use during periods of discharge and Williams has not documented that the produced water will actually be put to use during periods of discharge in violation of Ch. 2, Appendix H paragraph (a)(i) of the Water Quality Rules and Regulations of the DEQ.

j. Rather than the water being beneficially used, Williams plans to waste the water. Williams' application provides a "Water Balance Explanation" that shows that 202 acre feet of reservoir storage capacity will be constructed to retain the produced water. It further states that exfiltration will occur from these reservoirs at the rate of 100 barrels per day per acre feet of reservoir capacity, or 848,400 gallons per day. Williams' discharge plan is based on the assumption that this water will not be available for agricultural or wildlife use but instead will seep into the ground underlying the reservoirs where it is available to neither wildlife nor agriculture.

k. Williams also plans for large quantities of water not to be beneficially used but to be lost by infiltration so that the produced water will not reach the Powder River.

l. The Permit's effluent limits of specific conductance of 3000 and a sodium adsorption ratio of 18 will not protect plant life on the Maycock ranch from adverse effects of the discharge. The quality of the water discharged on the Maycock ranch will cause soils on the Maycock ranch to become saline-sodic and repel rainwater and normal runoff from rain and snow melt. The result will be the conversion of large areas of grassland to a greasewood/salt grass system.

m. At the Permit's effluent limit of 5000 ppm of total dissolved solids, the 1.25 million gallons daily discharge of water could contain 25 tons of salt which would be equivalent to 365 tons of salt per mile of channel in a year's time. Substantial quantities of this salt will be deposited on the Maycock ranch and adversely affect agricultural use and plant life.

n. Livestock graze on the Maycock ranch along the area where Williams will discharge. The Permit's effluent limits for sulfates of 3000 mg/l will not protect against adverse effects to stock watering on the Maycock ranch. The Wyoming Department of Agriculture has published material stating that sulfates over 1000 mg/l are "unsuitable" for livestock. The Utah State University Extension Service has published an Analysis of Water Quality for Livestock and concluded that the maximum recommended level for sulfates for calves was 500 ppm and for adult cattle was 1000 ppm.

o. The Permit's effluent limit for barium of 1.8 mg/l will not prevent adverse effects to livestock watering on the Maycock ranch. Utah State University Extension Service has published a document stating that the safe upper limit concentration of barium in drinking water for livestock is .2 mg/l. The Colorado State University Cooperative Extension Agency has stated that water containing more than .3 mg/l of barium is unacceptable for livestock consumption.

p. Williams has stated in its application that dissolved iron exists in the laboratory analyses in concentrations above Wyoming Water Quality Standards, and the Statement of Basis for the permit states that the discharge shall not cause visible deposits of iron on the bottom or the shoreline of the receiving water, yet the permit itself does not contain this restriction on iron deposits.

q. In a letter dated December 1, 2000 to the DEQ from the United States Environmental Protection Agency Region 8, ("EPA"), the EPA said, "Because all waters in Wyoming, including Class IV waters, are to be of sufficient quality to support agricultural uses and are to be free of bottom deposits, each permit shall be sufficiently stringent to allow for irrigation and to protect against bottom deposits of constituents such as iron, which tend to be present in discharges from CBM operations."

r. The exfiltration assumptions used by Williams in its "Water Balance Explanation" on which the Permit is based are not realistic, and substantially greater quantities of water will be discharged from the on-channel reservoirs than have been represented by Williams.

s. In order to prevent violation of the Water Quality Rules and Regulations, the DEQ has prohibited other coalbed methane operators proposing to discharge CBM water into reservoirs in the vicinity of the Maycock ranch from intentionally discharging waters from reservoirs or has prohibited such operators from discharging water from reservoirs except in the event of a 25 year/24 hour storm event. The DEQ has made a special exception for Williams in this Permit and allowed Williams to intentionally discharge water and allowed Williams to discharge water even though no 25 year/24 hour storm event has

occurred once the DEQ has approved so-called erosion control measures. Williams should not be allowed to deviate from the requirement that no intentional discharge of waters from the reservoirs should be allowed or from the requirement that no discharge from the reservoirs will be permitted except in the event of a 25 year/24 hour storm event.

t. There are no criteria established for the Permit's "WDEQ-approved erosion control measures." By failing to specify the criteria which must be met by these control measures, the affected landowners including Mr. Maycock are denied any opportunity to review or comment on those measures, and no mechanism is established for notifying the public or affected landowners of the DEQ's approval. The DEQ has effectively stripped this Council of its ability to review the DEQ's decision on a measure that is of critical importance in protecting water quality.

u. There are multiple water wells in the vicinity of Williams' proposed operations. The exfiltration rates projected by Williams and the quantity of water that Williams proposes to discharge into the on-channel reservoirs threaten groundwater standards and pose a threat to groundwater.

v. The Permit states that the outfalls are not authorized to discharge until a written groundwater compliance approval has been granted. The DEQ is granting a permit to discharge produced water into groundwater. No provision is made for persons who may be adversely affected to have notice of or participate in the DEQ's decision to approve a groundwater monitoring compliance plan or the DEQ's decision to grant an exemption. No provision is made for persons who may be adversely affected to participate in the process of determining if groundwater will be adversely affected. This Permit should not be issued until it is first determined that the groundwater will not be affected.

w. Williams' application makes a number of assumptions relating to mixing of produced water with natural flow, but the construction of self-regulating bypass facilities on on-channel reservoirs is required by the State Engineer's April 26, 2004 memo. Williams' mixing calculations do not account for this requirement and are based on the assumption that these self-regulating bypass facilities will not be used.

x. The Permit fails to include the conditions and limitations that are required in all permits by Ch. 2, Appendix H paragraphs (b)(i)(ii)(v) and (ix) of the Water Quality Rules and Regulations of the DEQ.

y. The Permit does not prevent degradation of Wyoming surface waters from a measurable decrease in crop or livestock production in violation of Ch. 1, § 20 of the Water Quality rules and Regulations of the DEQ.

z. The Permit does not prevent the presence of substances attributable to or influenced by the activities of man that will settle to form sludge, bank or bottom deposits in quantities which could result in significant aesthetic degradation, significant degradation of habitat for aquatic life or adversely affect agricultural use, plant life or wildlife in violation of Ch. 1, § 15 of the Water Quality Rules and Regulations of the DEQ.

aa. The Permit does not prevent the presence of floating and suspended solids attributable to or influenced by the activities of man in quantities which could result in significant aesthetic degradation, significant degradation of habitat for aquatic life, or adversely affect agricultural water use, plant life, or wildlife in violation of Ch. 1, § 16 of the Water Quality Rules and Regulations of the DEQ.

bb. The Permit does not prevent the waters from containing substances attributable to or influenced by the activities of man that produce taste, odor and color or that would visibly alter the natural color of the water in violation of Ch. 1, § 17 of the Water Quality Rules and Regulations of the DEQ.

cc. The Permit fails to assure compliance with the turbidity requirements of Ch. 1, § 23 of the Water Quality Rules and Regulations of the DEQ.

dd. The Permit fails to maintain existing water uses in violation of Ch. 1, § 8 of the Water Quality Rules and Regulations of the DEQ.

ee. The Permit fails to provide for and assure compliance with all applicable requirements of the Clean Water Act, the Wyoming Environmental Quality Act, and applicable Wyoming Water Quality Rules and Regulations which have taken effect prior to final administrative disposition of the permit in violation of Ch. 2 § 5 (c)(ii) of the Water Quality Rules and Regulations of the DEQ.

4. Request for Hearing. William P. Maycock requests a hearing before the Environmental Quality Council and requests that the Council reverse the decision to grant the Permit and grant the Petitioner such relief as he is entitled to by law or regulation.

Dated this 31 day of August, 2005.

Yonkee & Toner, LLP

By: Tom C Toner

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Certificate of Service

I certify that on the 31 day of August, 2005, I served a true and correct copy of the foregoing by depositing the same in the U.S. Mail, postage prepaid and addressed to Williams Production RMT Company, 300 North Works Avenue, Gillette, WY 82716.



Tom C. Toner

