

**FILED**

**NOV 03 2009**

*Jim Ruby, Executive Secretary  
Environmental Quality Council*

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Attorneys for Pennaco Energy, Inc.

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

In the Matter of the Appeal of JOHN )  
D. KOLTISKA, AC RANCH, INC., a )  
Wyoming Corporation, PRAIRIE )  
DOG RANCH, INC., a Wyoming ) Docket No. 09-3805  
Statutory Close Corporation, and )  
PRAIRIE DOG WATER SUPPLY )  
COMPANY from WYPDES Permit )  
No. WY0054364 )

**PENNACO ENERGY, INC.'S FINAL WITNESS AND EXHIBIT LIST**

Pennaco Energy, Inc., (Pennaco) submits its final witness and exhibit lists in anticipation of the hearing scheduled November 16 – 18, 2009, as follows:

**I. WITNESSES**

Pennaco previously filed a designation of expert witnesses which is incorporated herein by reference. Pennaco will call the following witnesses at the hearing:

- A. William Schafer, Ph.D., Schafer Limited, LLC, 3018 Colter Ave., Bozeman, MT 59715; (406) 587-6100**

Dr. Schafer will testify consistent with the information presented in his report submitted with Pennaco's Designation of Expert Witnesses, which has been previously made available to counsel for Petitioner and the DEQ. Dr. Schafer will also testify

consistent with his deposition testimony, and regarding any documents he has authored or received or regarding any exhibits introduced through him. Dr. Schafer may also rebut any testimony of Petitioners' expert witnesses if they are allowed to testify.

**B. Warren W. Adams, 235 Cat Creek Road, Sheridan, WY 82801;  
(307)751-1434**

Mr. Adams will testify regarding his farming, ranching, and irrigation practices, including the production of irrigated alfalfa, all of which currently rely on untreated CBM water. Mr. Adams will testify to his continued need for produced water to support his farming and ranching operations. Mr. Adams may also testify to the historical flow and condition of Wildcat Creek as well as historical irrigation practices in the area. Mr. Adams may also rebut any fact testimony of Petitioners' witnesses.

**C. Rob Koltiska, 5590 East Highway 86, Franktown, CO 80116;  
(303)792-8111**

Mr. Koltiska may be called to testify regarding the historical stream flow and condition of Wildcat Creek. Mr. Koltiska may also rebut any fact testimony of Petitioners' witnesses.

**D. Pennaco reserves the right to call other witnesses to rebut or explain evidence presented by Petitioners.**

**II. EXHIBITS**

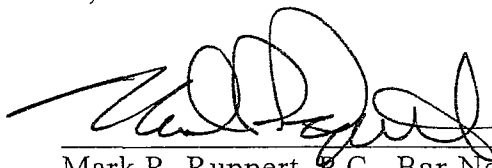
Pennaco may introduce at the hearing the exhibits listed on Pennaco's Final Exhibit List, attached as Exhibit A. In addition to the documents on its exhibit list, Pennaco reserves the right to use any additional exhibits it deems necessary, including

documents listed on other parties' exhibits lists, and any documents necessary for foundation, cross-examination or rebuttal.

### III. MOTIONS PENDING AND MISCELLANEOUS ITEMS

Pennaco has pending before the EQC a Motion for Summary Judgment and to Strike Expert Testimony.

Respectfully submitted November 3, 2009.



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ATTORNEYS FOR PENNACO ENERGY,  
INC.

**CERTIFICATE OF SERVICE**

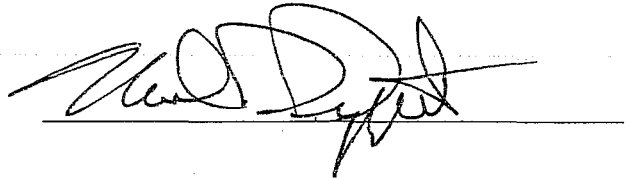
I hereby certify that on November 3, 2009, I served the foregoing PENNACO ENERGY, INC.'S FINAL WITNESS AND EXHIBIT LIST to the following by:

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Luke Esch  
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- U.S. Mail, postage prepaid
- UPS – overnight delivery
- Hand Delivery
- Fax
- E-mail

- U.S. Mail, postage prepaid
- UPS – overnight delivery
- Hand Delivery
- Fax
- E-mail



**Before the Wyoming Environmental Quality Council (Docket No. 09-3805)  
 PENNACO ENERGY, INC. (Applicant)  
 EXHIBIT A –FINAL EXHIBIT LIST**

| Exhibit | Date     | Description  | Witness(es) | Off | Obj | Adm | Res |
|---------|----------|--|-------------|-----|-----|-----|-----|
| A1      | 01/29/07 | Permit (New) WY0054364 w/Statement of Basis (Thomas Dep. Ex. 15)   |             |     |     |     |     |
| A2      | 09/10/07 | Pennaco's Proposed Modification/Renewal Application, WY0054364, and 9/11/07 cover letter (Thomas Dep. Ex. 4)   |             |     |     |     |     |
| A3      | 01/06/09 | Permit (Renewal) WY0054364 w/Statement of Basis (Thomas Dep. Ex. 2)  |             |     |     |     |     |
| A4      | 04/29/09 | Permit (Major Mod) WY0054364 w/Statement of Basis (Thomas Dep. Ex. 3)  |             |     |     |     |     |
| A5      | 08/18/09 | Schafer Rpt., Assessment of the Protectiveness of Effluent Limits adopted under Permit WY0054364 (Schafer Dep. Ex. 14) with 8/13/09 Energy Lab Rpts (Schafer Dep. Ex. 22) replacing pgs. 2 and 4 of App. C, Sample Analysis Rpt. |             |     |     |     |     |
| A6      |          | Map, 36" x 48" of Prairie Dog/Wildcat Creeks – Surface Water Samples   |             |     |     |     |     |
| A7      |          | Map, 24" x 36" of Prairie Dog/Wildcat Creeks – Prime Farmlands   |             |     |     |     |     |
| A8      |          | Map, 24" x 36" of Prairie Dog/Wildcat Creeks – Irrigated Land Capability Class   |             |     |     |     |     |
| A9      |          | Map, 24" x 36" of Prairie Dog/Wildcat Creeks – Depth to Groundwater  |             |     |     |     |     |
| A10     |          | Map, 24" x 36" of Prairie Dog/Wildcat Creeks – Drainage Class  |             |     |     |     |     |
| A11     |          | Table, Worst Case Scenario, Mixing Prairie Dog Creek Minimum Irrigation Flow with Maximum Effluent at/near Permit Limits (PEI 12384)   |             |     |     |     |     |
| A12     | 09/29/09 | Affidavit, Roger Brinkerhoff   |             |     |     |     |     |
| A13     | 09/29/09 | Affidavit, Neil Brinkerhoff  |             |     |     |     |     |

| Exhibit | Date         | Description  | Witness(es) | Off | Obj | Adm | Res |
|---------|--------------|--|-------------|-----|-----|-----|-----|
| A14     | 11/2/09      | Affidavit, Rob Koltiska  |             |     |     |     |     |
| A15     |              | Photos (7), Warren Adams' alfalfa crops  |             |     |     |     |     |
| A16     | 09 & 10/2008 | Suarez Article (Schafer Dep. Ex. 17)   |             |     |     |     |     |
| A17     | 03/17/08     | Zhao, Vance (Vance Dep. Ex. 33)  |             |     |     |     |     |
| A18     | 10/24/08     | EQC testimony of Vance, pp. 226-229 (Vance Dep. Ex. 32)  |             |     |     |     |     |
| A19     | 12/05/07     | Decision and Final Order, Oregon Case No. ZON2006-02490 (O'Neill Dep. Ex. 5)   |             |     |     |     |     |
| A20     | 12/05/07     | Decision and Final Order, Oregon Case No. ZON2007-00489 (O'Neill Dep. Ex. 6)   |             |     |     |     |     |
| A21     | 06/23/06     | Paige testimony excerpt  |             |     |     |     |     |
| A22     | 08/15/06     | Bauder testimony excerpt   |             |     |     |     |     |
| A23     | 11/23/07     | Barrett ltr to Lovett re: Flow in Wildcat Creek, Sheridan County (Thomas Dep. Ex. 9)                                   |             |     |     |     |     |
| A24     | 04/30/09     | Thomas ltr to Stewart re: Response to Comments Related to Proposed WYPDES Permit 0054364 (Pennaco) (Thomas Dep. Ex. 8) |             |     |     |     |     |
| A25     | 06/03/09     | Response to Pennaco's First Set of Discovery Requests to John D. Koltiska, et al.                                      |             |     |     |     |     |
| A26     | 06/01/09     | Response to Wyoming DEQ's First Discovery Request to Petitioners (Koltiska Dep. Ex. 4)                                 |             |     |     |     |     |
| A27     |              | Carbon Isotope slides (2 pages)  |             |     |     |     |     |
|         |              | Any other demonstrative exhibits to be prepared during trial   |             |     |     |     |     |
|         |              | Any exhibit identified in the various depositions taken in this matter   |             |     |     |     |     |
|         |              | Summaries of any exhibits listed above   |             |     |     |     |     |
|         |              | Oversized duplicates made of any of the exhibits listed above  |             |     |     |     |     |
|         |              | Any exhibit endorsed by Petitioner   |             |     |     |     |     |

| Exhibit | Date | Description                                       | Witness(es) | Off | Obj | Adm | Res |
|---------|------|---|-------------|-----|-----|-----|-----|
|         |      | Any exhibit endorsed by DEQ                       |             |     |     |     |     |
|         |      | Any exhibit necessary for rebuttal or impeachment |             |     |     |     |     |

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