



HOT SPRINGS COUNTY COMMISSIONERS

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Date: September 15, 2009

To: Mr. David Waterstreet, Water Quality Division of the
Wyoming Department of Environmental Quality
122 West 25th Street, Herschler Building
Cheyenne, Wyoming 82002

FILED
SEP 17 2009
Jim Ruby, Executive Secretary
Environmental Quality Council

Wyoming Environmental Quality Council
Dennis Boal, Chairman
Herschler Building, 1 West
122 West 25th Street, Room 1714
Cheyenne, Wyoming 82002

RE: Additional Comments on the Proposed Agricultural Use Protection
Policy: Revisions of Chapter 1, Water Quality Rules and Regulations

Dear Mr. Waterstreet and Board Members:

The Hot Springs County Board of County Commissioners previously submitted the following recommendation concerning the Agricultural Use Protection rule and policy making process:

The Hot Springs County Board of County Commissioners have participated in the public review process concerning revision of the State's water discharge regulations since the inception of the current review. The Board of County Commissioners strongly endorse the Chapter 1, Agricultural Use Protection Policy as recommended by the Water and Waste Advisory Board on March 28, 2008. The Hot Springs County Board of County Commissioners asserts that the Water and Waste Review Board conducted thorough public hearings and successfully outreached to the citizens of the Big Horn Basin. As such, it is the desire of the Board of County Commissioners that the EQC adopt the WWAB's recommendations substantially unchanged.

However, since the above recommendation was submitted in letter form on August 19, 2008, Hendrickx and Buchanan have issued their May 2009 report entitled "Expert Scientific Opinion on the Tier-2 Methodology". Their report clearly states that the Tier-2 methodology is scientifically fatally flawed. The Board of County Commissioners therefore recognizes that the "Irrigation Section" of the current Draft Agricultural Use Protection Rule is scientifically undefendable, and as a result, desires to change the County's recommendation to the following:

The Hot Springs County Board of County Commissioners strongly recommends that the EQC:

- 1.) Reject only the irrigation portion/section of the Draft Agricultural Use Protection Rule (as currently posted on Docket 08-3101) and remand/send only the "Irrigation Section" of the Agricultural Use Protection Rule back to the WWAB for modification of the Tier-2 Methodology in order to make the Tier-2 provisions workable.
- 2.) Adopt the numeric standards (5,000 mg/l TDS, 3,000 mg/L sulfate, and 2,000 mg/L chloride) proposed in the "Livestock Watering Section" of the proposed DRAFT Agricultural Use Protection Rule and Policy; that is, as recommended by the Water and Waste Advisory Board on March 28, 2008.
- 3.) Insert a "non-severability" provision in the proposed rule stating that the EPA must approve or disapprove the rule in its entirety, and if any provision of the rule is struck, then the entire rule is invalid.
- 4.) Retain the landowner waiver in both the Livestock Watering portion and the Irrigation portion of the proposed rule.

Consistency of the Draft Agricultural Use Protection Rule and Policy with Recommendations of the Water and Waste Advisory Board

The Hot Springs County Board of County Commissioners wishes to submit the following quotes from a letter (see Attachment "A") dated September 4, 2008 sent by John F. Wagner, Administrator of the Water Quality Division of DEQ to the Wyoming Environmental Quality Council Members entitled "RE: Proposed Appendix H of Chapter 1 of the WQD rules – Agricultural Use Protection"

GROUP 1The Board received overwhelming comment from the oil and gas industry, local governments, and the agricultural community that these standards should not be changed. The Board agreed and voted that these criteria should be included in Chapter 1." page 2

GROUP 2There was strong support from the oil and gas industry, local governments, and the agricultural community for the agency to continue to use these criteria on a "policy" basis, but not to incorporate them into the rules. The Board agreed with this approach and voted that this group of criteria be kept in policy." page 2

GROUP 3 The UW report received only qualified support at the Advisory Board hearings. The general position of the oil and gas industry, local governments, and agricultural community was that the UW report provides valuable information for livestock producers, but should not be used to change DEQ's livestock watering criteria which have been in place for 30+ years. It was argued that the existing criteria have

been proven to adequately protect stock and wildlife while allowing most produced water discharge to continue. Such discharges provide livestock operators with an important water source, especially in arid regions such as the Big Horn Basin."

"GROUP 4 While industry/agriculture liked the grandfather language, they were concerned that it would not withstand legal appeal. They continued to advocate their favored position which includes using the current criteria for setting effluent limits. Ultimately the Advisory Board decided to adopt the status quo position on and did not accept the agency's position."

Summary Almost all of the oral and written comment on the livestock criteria received by the Advisory Board was clearly and consistently in favor of the status quo and almost all of the comment was provided by the oil/gas industry, by agricultural advocacy groups, by local governments, and by independent livestock producers. Only one letter (from Kate Fox representing the Powder River Basin Resource Council) expressed support for adoption of the criteria in the UW study. There was no oral testimony in favor of adoption of the UW criteria. Considering the deep and broad support the status quo received during the public comment periods, the agency believes the action taken by the Advisory Board was appropriate. The agency does not oppose the Board's recommendations."

The Hot Springs County Board of County Commissioners finds that the recommendations of the WWAB with respect to the Draft Agricultural Use Protection Rule and Policy as posted on the Docket website for 08-3101 (see Attachment "C" which is attached by reference only), endorse "no change" and/or "status quo" with respect to livestock watering standards; and that, the following limits are endorsed by the WWAB and are endorsed by the WQD of DEQ via Mr. Wagner's letter of September 4, 2008:

5,000 mg/L	TDS
3,000 mg/L	Sulfate
2,000 mg/L	Chloride

The Board of County Commissioners also finds that the recommendations of the WWAB were in fact compelling and conclusive because numerous comments were received from commentators representing a broad back ground of interests - including County governments. In deed, this finding of the Board of County Commissioners is supported by a statement in Mr. Wagner's September 4, 2008 letter (which was quoted above) and is quoted again:

"Summary Considering the deep and broad support the status quo received during the public comment periods, the agency believes the action taken by the Advisory Board was appropriate. The agency does not oppose the Board's recommendations."

Wyoming Administrative Procedures Act Requirements Relating to the WWAB Recommendations

The Hot Springs County Board of County Commissioners asserts that the Council cannot change or modify the above water quality parameters (5,000 mg/L TDS, 3,000 mg/L Sulfate and 2,000 mg/L chloride) without remanding/sending the rule making process back to DEQ and the Water and Waste Advisory Board for another round of public hearings and public notices. The posted Draft Agricultural Use Protection Rule and Policy has contained the above mentioned water quality parameters since the Draft was posted to Docket 08-3101 on November 17, 2008; and as a result, the County has submitted comments under the absolute assumption that the water quality parameters listed above are the parameters for which the EQC is considering adopting at this point.

The County asserts that any amendment or change to the water quality parameters as posted in the Draft Agricultural Use Protection Rule would constitute a substantive change and drastic departure from the proposed rule that the WWAB and DEQ considered and recommended. Should the Council change or amend the water quality parameters as posted to Docket 08-3101 on November 17, 2008, the County asserts that such an action would violate the WAPA as well as specific rule making requirements of the EQA.

Comments Concerning Hendrickx and Buchanan’s “Expert Scientific Opinion On The Tier-2 Methodology” , May 2009

Chapter 5 of Hendrickyx and Buchanan’s May 2009 report is entitled “5. EXPERT SCIENTIFIC OPINIONS” (see Attachment “E” which is attached by reference only) and directly answers three (3) key questions poised by the EQC scope of work. Summation of the expert opinions is:

“ Scientific Expert Opinion A. The Tier 2 methodology as set forth in Appendix H section c(vi)(B) is not reasonable nor scientifically valid for determining the EC and SAR of water than can be discharged into an ephemeral drainage in Wyoming so that degradation of the receiving water will not be of such an extent to cause a measurable decrease in crop production.” page 21

“Scientific Expert Opinion B. The method set forth in Appendix H section c(vi)(B) for determining EC and SAR for permitting the discharge of produced water is not reasonable nor sufficiently defined nor scientifically defensible for the conditions in Wyoming.” page 22

“Scientific Expert Opinion on Way Forward. Since it is not scientifically defensible to use Tier 2, the question is how to move forward. The use of Tier 1 can be continued since it is conservative and has been accepted by the community.”

The Hot Springs County Board of County Commissioners concur with the Scientific Expert Opinions as stated by Hendrickx and Buchanan. Unfortunately, the Board of County Commissioners recognizes that their expert opinion(s) and recommendations imply that the "Irrigation Section" of the rule making process for the Draft Agricultural Use Protection Rule and Policy must be rejected by the Council and remanded/sent back to DEQ and the Waste and Water Advisory Board. The Board of County Commissioners finds that only the "Irrigation Section" of the Draft Agricultural Use Protection Rule and Policy needs to be remanded; and that, the "Livestock Watering" section of the rule should be adopted as recommended by the WWAB.

Request To Read John F. Wagner's September 4, 2008 Letter to the Environmental Quality Council at the EOC's September 30, 2009 Meeting

The County asserts that the new member(s) of the Environmental Quality Council should be fully informed of the WWAB's recommendations and the content of Mr. Wagner's letter of September 4, 2008; and that, failure to call the letter to the attention of new Council member(s) prior to a final vote on the Agricultural Use Protection Rule and Policy, constitutes an error of omission. It is the County's understanding that the Agricultural Use Protection Rule and Policy will be next addressed on Wednesday, September 30, 2009 at 9:00 AM and Thursday, October 1, 2009 if necessary. The Board of County Commissioners formally request that Mr. Wagner's letter of September 4, 2008 be read into the record at the upcoming meeting on September 30th for the benefit of the new Council member(s) and to refresh the other Council members

Social/Economic Impacts Of The Rule Making Process Have Effectively Been Closed Since The March 27, 2009 Letter From EOC Board Chairman Dennis Boal Was Issued

The Hot Springs County Board of County Commissioners assert that the social/economic impacts which the Agricultural Use Protection Rule and Policy may create, have been closed to consideration since Chairman Boal issued his March 27, 2009 letter (see Attachment "D") which in essence stated "we don't want to hear about it". The County Commissioners further assert that additional time and money have been allocated to technical review(s), such as the Hendrickx-Buchanan report, at the same time that the parties requesting equal treatment for social/economic impacts have been denied consideration.

The Board of County Commissioners further assert that the Council has failed to acknowledge that the various Wyoming counties are governmental agencies which have substantial authority with regard to adopting regulatory provisions; and that, Hot Springs County has adopted the Hot Springs County Natural Resources Plan for State and Federal Lands by Resolution of the Board of County Commissioners on April 5, 2005. The Natural Resources Plan contains various provisions governing the management of State and Federal lands within the County including:

“Public lands are to be managed for sustainability and/or increase in all of the resources to include the social-economic affect on the County and its residents. To that end, no net loss in total economic activity, adjusted for inflation, shall be acceptable; and in order to meet this goal, mitigation measures are to be employed by State and Federal land managers. (page 72).”

“2. As required by Federal statute, Hot Springs County shall require that both State and Federal agencies assess the effect of their actions on the economy, custom and culture of Hot Springs County by utilization of economic studies such as cost/benefit analysis, economic impact analysis, lowest cost alternatives, most economical benefit analysis and analysis of the economy of the County in order to protect its general economic health. Hot Springs County at its discretion may be involved in this process. (page 73).”

“3. As required by the Administrative Procedures Act, Hot Springs County shall require the various agencies to document that their decisions adequately took into account the health, safety, custom, culture, and general welfare (including the economic impact) of their actions on the County. (page 73).”

The Board of County Commissioners strongly asserts that the Council has not acted in good-faith by rejecting the legally adopted provisions of the County’s Land Use Plan which require equal treatment for social/economic issues. To that end, the County has been willing to proceed in the District Court system in order to gain equal treatment for social/economic issues related to the Agricultural Use Protection Rule and Policy making process.

Changes in the Facts and Circumstances Affecting Produced Water Discharges

The Hot Springs County Board of County Commissioners asserts that there have been significant changes in the “facts and circumstances” bearing upon the reasonableness of the pollution involved including: (A) the character and degree of injury to or interference with the well being of the people affected”. WYO. STAT. § 35-11-302(a)(vi)(A). The Board alleges that:

- 1.) There has been a significant slow down in coalbed natural gas (CBNG) production and development which has sharply reduced the amount of discharged water being discharged (primarily in the Powder River Basin). For July 2009, the water produced in association with CBNG production was down to October 2000 levels; that is, down from the high point in water production of approximately 50%. (see Attachment “F” and Attachment “G”).**

As a result of the sharp decline in CBNG production and development, the Board:

- 1.) Questions the need for new produced water standards (because DEQ wrote the rules in response to concerns from the Powder River Basin related to CBNG), and
- 2.) Recommends delaying the adoption of the proposed rule until DEQ has fully identified and considered the “character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected.”

Attorney General’s Opinion On Whether Or Not The Environmental Quality Council May Enact Separate and Distinct Regulations for CBNG Development

Attorney General Pat Crank’s July 12, 2006 opinion (see Attachment “B”) written in response to questions submitted by the Environmental Quality Council, Mark Gordon, Chairman, directly addressed the question as to whether or not the Council may enact separate and distinct regulations for CBNG development. Quoting from page 8 of the Attorney General’s opinion:

“ Wyoming statute also provides that the administrator has the power to recommend “that any rule, regulation or standard or any amendment adopted [] may differ in its terms and provisions as between particular types, characteristics, quantities, conditions and circumstances ...” WYO. STAT. ANN. § 35-11-110(a)(ix). Accordingly, if the Council desires to so promulgate a separate and distinct section related to CBNG, it may do so.”

The Hot Springs County Board of County Commissioners have asserted that CBM water discharge issues should be separated from conventional oil/gas produced water discharge issues – particularly in the Big Horn Basin. The Board submitted comments in their August 19, 2008 letter to Mr. David Waterstreet entitled “ *Comments on the Proposed Agricultural Use Protection Policy – Revisions of Chapter I, Water Quality Rules and Regulations.*” Quoting from page 6 of the Board’s comments:

Hot Springs County strongly recommends separation of CBM discharge water standards from the historically occurring discharge standards in Wyoming in order to prevent CBM problems from impacting the other activities in Wyoming, particularly in “have not” Counties. The proposed separation of the discharge standards, as proposed in Appendix “H” and Appendix “I” of the Chapter 2 revisions petitioned by the PRBRC, are deemed essential to protect the social/economic structure of Hot Springs County. pages 5 and 6

The Hot Springs County Board of County Commissioners again wishes to request that the Council treat CBM water discharge issues as a separate regulatory matter.

**Request To Post Attorney General Patrick Crank's July 12, 2006 Opinion
Addressed to Mark Gordon, Chairman of the Wyoming Environmental Quality
Council to Docket Number 08-3101**

The Board of County Commissioners asserts that Attorney General Patrick Crank's July 12, 2006 letter is crucial information with respect to the EQC's review of the Agricultural Use Protection Rule; and that, the Docket 08-3101 listing is materially deficient without inclusion of the letter. The County also asserts that the public record in general is incomplete without posting of the letter to Docket 08-3101.

The County further asserts that the new members of the Environmental Quality Council should be fully informed of Attorney General Patrick Crank's opinion of July 12, 2006; and that, failure to distribute the letter and/or post on the Docket Number 08-3101 website prior to a final vote on the Ag Use Protection Policy, constitutes an error of omission. It is the County's understanding that the Ag Use Protection Policy will be next addressed on Wednesday, September 30, 2009 at 9:00 AM and Thursday, October 1, 2009 if necessary. The Board of County Commissioners formally request that Attorney General Patrick Crank's opinion letter of July 12, 2006 be read into the record at the upcoming meeting on September 30, 2009 for the benefit of the new Council members and to refresh the Council members.

**Resubmittal Of The Board's Comments Concerning: *UNIQUE GEOTHERMAL,
HYDROTHERMAL, GEYSER, AND HOT SPRINGS CAUSE DRASTICALLY
DIFFERENT DISCHARGE WATER QUALITY***

"Northwest Wyoming's unique geothermal and hydrothermal resources, including Yellowstone National Park's world famous geysers and Thermopolis's Hot Springs State Park, result from tectonically active mountain building processes oftentimes related to volcanic and earthquake activity. Although the hydrothermal resources are well known in Yellowstone and Thermopolis, there are 38 inventoried hot springs in Wyoming and an identified geothermal/hydrothermal area outside of Cody in Park County.

Many of the inherent groundwater resources in the northwest Wyoming area, especially the deeper wells and oil field discharge waters, are highly mineralized indicating close association with mountain building activities oftentimes deriving from deep within the earth. These naturally occurring mineralized waters cannot be compared to the quality of other waters in Wyoming, and are literally in "a class of their own".

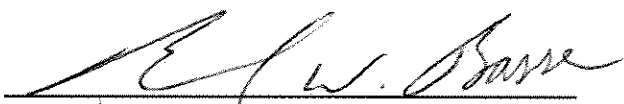
The immediate affect of the highly mineralized water, both naturally occurring such as the Big Springs, or discharges by man such as the Hamilton Dome discharge water, is to establish highly mineralized water as the background standard for the respective river and/or drainage they flow into. Since Hamilton Dome has been discharging for decades, the County asserts that the established, historical discharge has not only

established a highly mineralized background standard for Cottonwood Creek, but has also created dependent agricultural and wildlife uses for the continuously discharged water.” pages 4 and 5

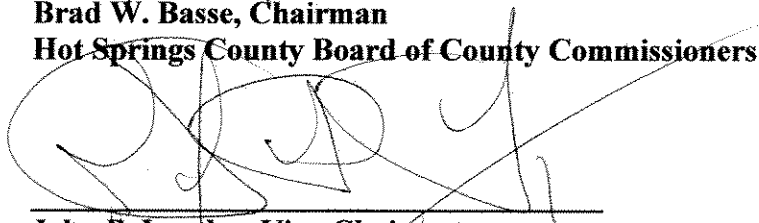
The Board of County Commissioners strongly asserts that the Environmental Quality Council and Department of Environmental Quality have failed to address the unique geologic conditions in the Big Horn Basin which create unique water quality background standards. The above quoted comments, which were contained in the Board’s August 19, 2008 comment letter, clearly point out the unique geologic conditions in the Big Horn Basin.

We request that these comments be entered into the public record concerning the Chapter 1, Section 20 revision to the State of Wyoming’s Water Quality Rules and Regulations. In addition we request that the entire Hot Springs County Natural Resources Plan for State and Federal Lands be recognized as extant and amended to the public records by reference.

Thank you very much for the opportunity to publicly comment and submit written comments concerning the Chapter I revisions.



Brad W. Basse, Chairman
Hot Springs County Board of County Commissioners



John P. Lumley, Vice-Chairman
Hot Springs County Board of County Commissioners

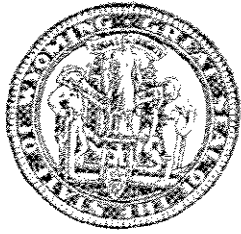


Frank T. Manning, Commissioner
Hot Springs County Board of County Commissioners

ATTACHMENTS:

- A. ***“RE: Proposed Appendix H of Chapter 1 of the WQD Rules – Agricultural Use Protection”***, September 4, 2008 letter and/or memorandum from John F. Wagner, Administrator of the WQD of DEQ to the Wyoming Environmental Quality Council Members.
- B. Attorney General Patrick Crank’s July 12, 2006 letter of legal opinion to Mark Gordon, Chairman of the Wyoming Environmental Quality Council regarding the *Petition To Amend Department Of Environmental Quality Division Rules, Chapter 2, Appendix H (petition)*.
- C. *Chapter 1, Water Quality Rules and Regulations, Appendix H, Agricultural Use Protection*, November 17, 2009 Draft Agricultural Use Protection rule posted to EQC Docket 08-3101 by Waterstreet. (attached by reference only due to size of the document)
- D. March 27, 2009 letter from Dennis Boal, Chairman of the Environmental Quality Council to the Wyoming County Commissioners Association and the Commissioners of Washakie, Johnson, Weston, Park and Hot Springs County entitled *“Re: Request for Socio-Economic Study”*.
- E. *“Expert Scientific Opinion On The Tier-2 Methodolgy – Report to the Wyoming Environmental Quality Council”*, by Jan M. H. Hendrickx and Bruce A. Buchanan, May 2009. (attached by reference only due to size of the document)
- F. *“Powder River Basin Coalbed Methane – Gas & Water Production by Month – 1998 to 2009”*, Graph from the Wyoming Oil & Gas Conservation Commission website, <http://wogcc.state.wy.us/coalbedchart.cfm>
- G. *“Powder River Basin Coalbed Methane – Producing & Shut-in Wells by Month – 1998 to 2009”*, Graph from the Wyoming Oil & Gas Conservation Commission website, <http://wogcc.state.wy.us/coalbedchart.cfm>

ATTACHMENT "A"



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

FILED

September 4, 2008

SEP 04 2008

Wyoming Environmental Quality Council Members

*Jim Ruby, Executive Secretary
Environmental Quality Council*

RE: Proposed Appendix H of Chapter 1 of the WQD Rules – Agricultural Use Protection

Dear EQC Members:

The purpose of this letter is to provide you with some preliminary help and guidance before you address the above referenced addition to the surface water quality standards (Chapter 1 of the WQD rules). Those of you who were on the Council in February of 2007 will recall that you approved changes to the surface water quality standards except for Appendix H - Agricultural Use Protection, which was remanded back to DEQ for directed revisions and full vetting by the public and the Water/Waste Advisory Board. The Council also directed the agency to consider the pending University of Wyoming study on livestock water quality criteria before returning to the Council with the proposed rule.

As directed, the agency addressed the concerns raised at the Council hearing, evaluated the recommendations of the UW study, and held four hearings on the matter before the Advisory Board.

The proposed rule has two main sections: (1) Criteria for the protection of irrigation, and (2) Criteria for the protection of livestock watering. Most of the comment and discussion before the Advisory Board in 2007-08 was focused on the livestock watering criteria. I believe that this was because the irrigation proposal has already been well discussed and considered by all interested parties, and the agency was not proposing significant changes from the policy that is currently in use. On the other hand, because of the UW study, the livestock criteria were being considered for extensive revision.

While I expect the irrigation portion of the proposed rules will generate considerable interest and comment during your public hearing(s), the basics of the irrigation portion of the rule are already known by the Council members who were in place in February of 2007. For this reason, in this letter I am going to concentrate on the livestock watering portion of the rule, much of which will be new information to all Council members.

During your consideration of this rule it would be my recommendation that you try to keep deliberations of the irrigation portion of the rule separate from deliberations on the livestock watering portion. This was the approach taken by the Advisory Board, and I believe they found that approach made their deliberations more effective.



Livestock Watering Criteria Discussion:

Attached is a single page document which divides livestock watering criteria into four "groups". I am going to describe the significance of each group and the Advisory Board's decision concerning each group.

GROUP 1

These are the livestock watering criteria that have been in place since the 1970's and are already incorporated into Chapter 2 of WQD's rules as effluent limits for conventional oil and gas produced water as well as for CBM discharges. The Board received overwhelming comment from the oil and gas industry, local governments, and the agricultural community that these standards should not be changed. The Board agreed and voted that these criteria should be included in Chapter 1.

GROUP 2

These criteria are not in rule, but have been used for several years by the WQD as additional criteria to evaluate the livestock watering suitability of conventional oil and gas and CBM discharges. There was strong support from the oil and gas industry, local governments, and the agricultural community for the agency to continue to use these criteria on a "policy" basis, but not to incorporate them into the rules. The Board agreed with this approach and voted that this group of criteria be kept in policy.

GROUP 3

These are the livestock watering parameters and criteria recommended in the UW study. The agency hired Dr. Merl Raisbeck at UW's Dept. of Veterinary Sciences and Renewable Resources to conduct an extensive review of the available literature on livestock watering criteria. The report (copy attached) provided by Dr. Raisbeck and his colleagues provided exactly the information requested. We believe it provides the most up to date summary of the information currently available on the subject of water quality for livestock.

The UW report received only qualified support at the Advisory Board hearings. The general position of the oil and gas industry, local governments, and agricultural community was that the UW report provides valuable information for livestock producers, but should not be used to change DEQ's livestock watering criteria which have been in place for 30+ years. It was argued that the existing criteria have been proven to adequately protect stock and wildlife while allowing most produced water discharges to continue. Such discharges provide livestock operators with an important water source, especially in arid regions of the state such as the Big Horn Basin.

GROUP 4

These are the livestock watering criteria that the agency proposed to the Advisory Board. Basically, the agency attempted to set limits that included most of the recommendations of the UW study as well as some of the existing standards and policy on livestock watering. The agency proposed that produced water discharges permitted prior to 1/1/98 (see the last paragraph of item (a) in the proposed


Appendix H) be grandfathered in under the old criteria, but post 1/1/98 discharges would have to meet the more stringent criteria recommended in the UW study. Since almost all conventional oil and gas discharges were permitted prior to 1/1/98 and almost all CBM discharges were permitted after 1/1/98, the overall result of the agency's proposal would have been to grandfather in the existing conventional oil and gas discharges under the old standards, but make CBM and new conventional discharges meet the newer and more stringent criteria.

While industry/agriculture liked the grandfather language, they were concerned that it would not withstand legal appeal. They continued to advocate their favored position which includes using the current criteria for setting effluent limits. Ultimately the Advisory Board decided to adopt the status quo position and did not accept the agency's proposal.

Summary

Almost all of the oral and written comment on the livestock criteria received by the Advisory Board was clearly and consistently in favor of the status quo and almost all of the comment was provided by the oil and gas industry, by agricultural advocacy organizations, by local governments, and by individual livestock producers. Only one letter (from Kate Fox representing the Powder River Basin Resource Council) expressed support for adoption of the criteria in the UW study. There was no oral testimony in favor of adoption of the UW criteria. Considering the deep and broad support the status quo received during the public comment periods, the agency believes that the action taken by the Advisory Board was appropriate. The agency does not oppose the Board's recommendations.

Sincerely,



John F. Wagner
Administrator

JFW/rm/8-0665

Enclosure: Univ. of WY Water Quality Criteria for Livestock Report

cc: Teri Lorenzon, EQC Director
Jim Ruby, EQC Executive Secretary
Joe Girardin, EQC Paralegal
John Corra, DEQ Director
David Waterstreet, WQD Cheyenne
Bill DiRienzo, WQD Cheyenne

Group 1 (Existing Chapter 2 Effluent Limits)

<u>Parameter</u>	<u>Limit – Units</u>
Total Dissolved Solids (TDS)	5,000 mg/l
Sulfate	3,000 mg/l
Chloride	2,000 mg/l

Group 2 (Existing Policy Limits)

<u>Parameter</u>	<u>Limit – Units</u>
Boron	5.0 mg/l (Dissolved)
Cadmium	.050 mg/l (Dissolved)
Chromium	1.0 mg/l (Dissolved)
Copper	.5 mg/l (Dissolved)
Fluoride	4.0 mg/l (Dissolved)
Lead	.1 mg/l (Dissolved)
Mercury	.01 mg/l (Dissolved)
Selenium	.1 mg/l (Dissolved)
Zinc	2.5 mg/l (Dissolved)

Group 3 (UW Report Recommendations)

<u>Parameter</u>	<u>Short Term Exposure Limit – Units</u>	<u>Chronic Exposure Limit - Units</u>
Arsenic	1 mg/l (Dissolved)	1 mg/l (Dissolved)
Barium	10 mg/l (Dissolved)	10 mg/l (Dissolved)
Fluoride	2 mg/l (Dissolved)	2 mg/l (Dissolved)
Molybdenum	.3 mg/l (Dissolved)	.3 mg/l (Dissolved)
Nitrate	500 mg/l	500 mg/l
Nitrite	100 mg/l	100 mg/l
Selenium	.1 mg/l	.1 mg/l (Dissolved)
Sodium	4,000 mg/l (Dissolved)	1,000 mg/l (Dissolved)
Sulfate	1,800 mg/l	1,000 mg/l

Group 4 (Agency's Proposed Limits to Advisory Board)

<u>Parameter</u>	<u>Limit – Units</u>
Total Dissolved Solids (TDS)	5,000 mg/l
Sulfate	2,000 mg/l
Boron	5.0 mg/l (Dissolved)
Cadmium	.050 mg/l (Dissolved)
Chromium	1.0 mg/l (Dissolved)
Copper	.5 mg/l (Dissolved)
Fluoride	4.0 mg/l (Dissolved)
Lead	.1 mg/l (Dissolved)
Mercury	.01 mg/l (Dissolved)
Molybdenum	.3 mg/l (Dissolved)
Selenium	.1 mg/l (Dissolved)
Sodium	1,000 mg/l (Dissolved)
Zinc	2.5 mg/l (Dissolved)



Office of the Attorney General

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Chief Deputy Attorney General
Elizabeth C. Gagen

Deputy Attorney General
Michael L. Hubbard

July 12, 2006

**PRIVILEGED AND CONFIDENTIAL
ATTORNEY/CLIENT COMMUNICATION**

Mark Gordon, Chairman
Wyoming Environmental Quality Council
122 West 25th Street, Room 1714
Cheyenne, WY 82002

Dear Chairman Gordon:

The Council asked this office to address several legal questions regarding the PETITION TO AMEND DEPARTMENT OF ENVIRONMENTAL QUALITY WATER QUALITY DIVISION RULES, CHAPTER 2, APPENDIX H (Petition) and the Attorney General's Formal Opinion No. 2006-001. Our office sent the Council a list of the questions as we understood them, and the Council has confirmed that these were the questions posed. We will address each question in turn.

Question 1: The Clean Water Act states that "use in agricultural or wildlife propagation" means "that the produced water is of good enough quality to be used for wildlife or livestock watering or other agricultural uses and that the produced water is actually put to such use during periods of discharge." Is the Council complying with the Act, if it does not assure that the produced water is "actually put to such use?"

The Clean Water Act (CWA) generally prohibits the discharge of water produced in oil and gas operations into the waters of the nation. 40 C.F.R. 435.32. There is however an exception for water used in agriculture and wildlife propagation. 40 C.F.R. §§ 435.51; 435.52. The CWA defines "use in agriculture or wildlife propagation" as

meaning that "the produced water is of good enough quality to be used for wildlife or livestock watering or other agricultural uses and that the produced water is actually put to such use during periods of discharge" 40 C.F.R. § 435.51(c). In ascertaining the meaning of this provision and Wyoming's compliance with it, we are directed to determine the intent from the words of the statute. Indeed, when issues of statutory construction arise we look to the plain language of the statute itself. *Watt v. Alaska*, 451 U.S. 259, 265, 101 S.Ct. 1673, 1677 (1981). Additionally, a guiding principle of statutory construction is that a statute ought to be construed as a whole. *TRW Inc. v. Andrews*, 534 U.S. 19, 31, 122 S.Ct. 441 (2001). We must also consider the provisions in light of the purposes Congress sought to serve. *Chapman v. Houston Welfare Rights Organization*, 441 U.S. 600, 608, 99 S.Ct. 1905, 1911 (1979).

We begin with the purposes of the CWA. One of those purposes is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters." 33 U.S.C. § 1251. The language of the CWA should be considered in light of these purposes. It is worth noting that this purpose is similar to one of the declared purposes of Wyoming's Environmental Quality Act (EQA), which is to "enable the state to prevent, reduce and eliminate pollution..." WYO. STAT. ANN. § 35-11-102. With this purpose in mind we move to the language of the CWA.

When considering the meaning of the provision, it must be read in toto. Therefore, the language "actually put to such use," must be considered with the rest of the provision. Specifically, the Council must consider "and actually put to such use" as that phrase relates to "the produced water is of **good enough quality to be used for wildlife or livestock watering or other agricultural uses.**" 40 C.F.R. § 435.51(c). "Actually put to such use" modifies both "wildlife or livestock watering" and "other agricultural uses." What the phrase "actually put to such use" for wildlife or livestock watering or other agricultural uses is not completely clear and unfortunately, there has not been judicial or agency interpretation of these provisions. However, it is clear that "actually put to such use" is not the same as "beneficial use." See, Formal Opinion 2006-001; 44 Fed. Reg. 22069, 22075 (April 13, 1979). In fact, the EPA specifically noted that the meaning of "beneficial use" was not connected with the meaning of these regulations. *Id.* Thus, the meaning of "actually put to such use" does not connote the strict requirements of "beneficial use" as that term is used in water law. This distinction may indicate flexibility in the requirement of "actually put to such use" such that assuring that the water is accessible for wildlife or livestock watering, may meet the purposes of this provision.

The likelihood of this flexibility is greater when we consider other provisions of the CWA. In particular, the CWA includes numerous provisions that set specific effluent limitations. Such provisions indicate that the legislature knew how to set specific limitations when it desired to do so. However, nothing in 40 CFR 435.51 indicates a

specific effluent limitation. Additionally, "actually put to such use" does not appear to equate to "consumed" as that language could have easily be used if that was the intent.

Furthermore, the CWA expressly states, "[i]t is the policy of Congress that the authority of each state to allocate **quantities** of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired.... 33 U.S.C. § 1251(g) (emphasis added). It is therefore unlikely that "actually put to such use" as used by the CWA indicates that the flow is limited to the amount water actually to be consumed as such a reading would be contrary to this stated policy. Indeed, the flexibility of "actually put to such use" seems even more likely when considering the purposes of the CWA. As noted above, those purposes focus on the quality of the nation's waters. Thus, the emphasis of 40 CFR 435 is undoubtedly on the portion that declares that the "produced water is of good enough quality to be used for wildlife or livestock watering or other agricultural uses," and if the water is of this quality, it can be presumed to be "actually put to such use."

As discussed in Formal Opinion 2006-001, it is our opinion that the Council does not have jurisdiction to address the quantity of water actually used, but does have authority to address issues involving the quality of discharged water. Currently, the existing Water Quality Division (WQD) rules reflect the language of 40 C.F.R. 435.51(c) to provide that the produced water must meet the same basic quality standard in order to be discharged into the surface waters of the state. *See*, Water Quality Division Rules, ch. 2, App. H (a)(i). The rules additionally provide that as long as the discharge water is accessible to livestock and/or wildlife and meets certain quality requirements, the discharge will be considered in compliance with Appendix H. *See*, Water Quality Division Rules, ch. 2, App. H (d)(i). As such, the Council has incorporated the CWA's requirements. As long as the Council assures that the discharges are consistent with these regulations, the Council should be in compliance with the CWA.

Question 2: If the quantity of produced water is impacting land quality, does the Council have the authority to regulate the quantity of water produced?

The Council is given the power to promulgate rules and regulations necessary for the administration of the (EQA). WYO. STAT. ANN. § 35-11-112(a)(i). Indeed, the legal obligation imposed on the Council by the legislature is "to promulgate rules and regulations necessary to prevent, reduce and eliminate pollution." *Tri-State Generation & Transmission Ass'n v. Environmental Quality Council*, 590 P.2d 1324, 1332 (Wyo. 1979). The EQA grants the Council the authority to regulate, among other things, both land quality and water quality. A search of the land quality provisions reveals that those provisions generally relate to mining activities and do not include provisions granting the Council authority to regulate the quantity of discharged water for the sake of land quality. *See*, WYO. STAT. ANN. §§ 35-11-401 through -437.

The provisions of the EQA related to water quality similarly do not relate to the effect of discharged water on land quality. Instead, those provisions provide the Council with the authority to regulate water quality as it relates to several activities. WYO. STAT. ANN. § 35-11-301 states:

(a) No person, except when authorized by a permit issued pursuant to the provisions of this act, shall:

(i) Cause, threaten or allow the discharge of any **pollution or wastes into the waters of the state;**

(ii) Alter the physical, chemical, radiological, biological or bacteriological properties of **any waters of the state;**

(iii) Construct, install, modify or operate any sewerage system, treatment works, disposal system or other facility, excluding uranium mill tailing facilities, capable of causing or contributing to pollution, except that no permit to operate shall be required for any publicly owned or controlled sewerage system, treatment works or disposal system;

(iv) Increase the quantity or strength of any discharge;¹

(v) Construct, install, modify or operate any public water supply or construct any subdivision water supply, except that no permit to operate shall be required for any publicly owned or controlled public water supply and a permit under this section shall not be required for subdivision water supplies consisting of individual wells serving individual lots of a subdivision. (Emphasis added.)

A reading of the plain language of this statute shows that the Council does not have authority to regulate the quantity of water discharged for the sake of land quality.

¹ WYO. STAT. ANN. § 35-11-103(c)(vii) defines "discharge" as "any addition of any pollution or wastes to any waters of the state." Thus, this provision is not intended to convey authority to regulate water quantity without regard to quality.

Question 3: If the Council does not have the authority to regulate the quantity of water produced from coal bed natural gas (CBNG) development, who does?

As noted in the Formal Opinion No. 2006-001, the EQA does provide the Council with authority to regulate water quantity if the quantity of the water is causing unacceptable water quality or has the potential to cause unacceptable water quality. Thus, the Council does have the limited authority to regulate quantity of produced water in those instances. The State Engineer's Office and the Oil and Gas Conservation Commission are other agencies with authority over produced water.

Specifically, the Wyoming Constitution grants the State Engineer and the Board of Control "supervision of the waters of the state" WYO. CONST. art. 8 §§ 2, 5. This authority includes matters related to appropriation and distribution. *Id.* The waters of the state include groundwater. *See*, WYO. STAT. ANN. §§ 41-3-903, 41-3-904 (defining by-product water and allowing for its appropriation). Groundwater diversions require a permit from the State Engineer's Office. *See*, WYO. STAT. ANN. § 41-3-905. Permits of this sort "shall be granted as a matter of course, if the proposed use is beneficial and, if the state engineer finds that the proposed means of diversion and construction are adequate." WYO. STAT. ANN. § 41-3-931.

Additionally, the statutes related to the State Engineer's Office provide:

A water right is a right to use the water of the state, when such use has been acquired by the beneficial application of water under the laws of the state relating thereto, and in conformity with the rules and regulations dependent thereon. Beneficial use shall be the **basis, the measure and limit of the right to use water at all times ...**

WYO. STAT. ANN. § 41-3-101 (emphasis added). The EQA provides that nothing in the act "limits or interferes with the jurisdiction, duties or authority of the state engineer, [or] board of control..." WYO. STAT. ANN. § 35-11-1104(a)(iii).

The Oil and Gas Conservation Commission (OGCC) has similarly been granted some authority for produced water. Specifically the OGCC has been granted the authority to regulate, for conservation purposes "disposal of salt water, nonpotable water, drilling fluids and other oil-field wastes which are uniquely associated with exploration and production operations." WYO. STAT. ANN. § 30-5-104(d)(ii)(D). Accordingly, through this authority the OGCC may regulate the disposal of the quantity of produced water falling into these categories.

Question 4: Does the Council have the authority to regulate the quantity of water produced from CBNG if the Council determines that the produced water is a “nuisance” under the definition of pollution as found in WYO. STAT. ANN. § 35-11-103(c)(i)?

As noted above, the Council has the authority to regulate the discharge of “pollution” into the waters of the state. The definition of pollution as it relates to water quality is quite broad. Specifically, WYO. STAT. ANN. § 35-11-103(c)(i) provides:

‘Pollution’ means contamination or other alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity or odor of the waters or **any discharge of any acid or toxic material, chemical or chemical compound, whether it be liquid, gaseous, solid, radioactive or other substance, including wastes, into any water of the state which creates a nuisance** or renders any water harmful, detrimental or injurious to public health, safety or welfare, to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses, or to livestock, wildlife or aquatic life, or which degrades the water for its intended use, or adversely affects the environment. (Emphasis added).

The language of this definition includes the discharge of a substance which creates a “nuisance.” “Nuisance” is not a defined term under the provisions of the EQA and therefore should be given its plain and ordinary meaning. Dictionaries define “nuisance” as “harm, injury” or “one that is annoying, unpleasant or obnoxious” Merriam Webster’s *Collegiate Dictionary*, 850 (11th Ed. 2004). “Nuisance” as used in this statute should be given a similar meaning. Additionally, the meaning of “nuisance” must be contemplated as that word is arranged and connected within the statute itself. *BP America Prod. Co. v. Dep’t of Revenue*, 2005 WY 60, ¶15, 112 P.3d 596, 604 (Wyo. 2005). Specifically, “nuisance” must not be read in isolation but in context of the statute as a whole. *Id.* When considering “nuisance” in context, it is clear that it must be a discharge of any “acid or toxic material, chemical or chemical compound, whether it be liquid, gaseous, solid, radioactive or other substance, including waste into any water of the state” that creates the nuisance. The Council is granted the authority to regulate the discharge of substances into the waters of the state that create a “nuisance” in that sense.

Question 5: Does the Council have the authority to regulate the quantity of water produced from CBNG if the Council determines that the quantity of produced water causes erosion?

This question also requires the consideration of the definition of "pollution." The plain language of the definition of pollution includes no mention of erosion. The definition does, however, include the addition of a "substance" to water which renders the water detrimental to commercial, industrial, agricultural, recreational, or other legitimate beneficial uses. WYO. STAT. ANN. § 35-11-103(c)(i). Again however, the meaning of the word "substance" must be contemplated as that word is arranged and connected within the statute itself. *BP America Prod. Co. v. Dep't of Revenue*, 2005 WY 60, ¶15, 112 P.3d 596, 604 (Wyo. 2005). Specifically, like "nuisance," "substance" must not be read in isolation but in context of the statute as a whole. *Id.* Indeed, a rule of statutory construction is that a word is known by the company it keeps. *Gustafson v. Alloyd Co., Inc.* 513 U.S. 561, 575, 115 S.Ct. 1061, 1069 (U.S. 1995). This rule is applied to avoid ascribing to one word a meaning so broad that it is inconsistent with its accompanying words and thus giving unintended breadth to legislation. *Id.*

In this instance, the word "substance" is used in a list including "acid or toxic material, chemical or chemical compound, whether it be liquid, gaseous, solid, radioactive or other substance, including wastes." WYO. STAT. ANN. § 35-11-103(c)(i). It therefore appears that "substance" as it is used in this statute, is intended to mean something similar to the other listed materials. Thus, if the produced water is of sufficient quality, the addition of that water to water would likely not be considered the addition of a "substance." Accordingly, the Council does not have the authority to regulate the quantity of water simply because it causes erosion.

Question 6: Does the Council have the authority to regulate the quantity of water produced from CBNG if the Council determines that the quantity of produced water effects wildlife?

This question again requires the consideration of the definition of "pollution." This definition specifically includes the addition of substances to water which renders the water detrimental to wildlife uses. If the quantity of the discharged water is such that it renders the quality of the water into which it is discharged injurious to wildlife, then the Council has the authority to regulate the quantity of produced water discharged.

Question 7: Is CBNG discharged water considered "return flow" as that phrase is used in Wyoming Law?

It appears the phrase "return flow" has never been specifically defined by Wyoming statute, rule, or case law. However, in water law, the generally accepted meaning of the term "return flow" is "water drawn from a stream and impounded or used in irrigation which subsequently arrives again at the stream from which it was initially extracted. *U.S. v. Warm Springs Irr. Dist.*, 38 F. Supp 239, 241 (D. Or. 1940). This definition is consistent with the context in which the term "return flow" is used within

Wyoming statutes. *See*, WYO. STAT. ANN. §§ 41-3-104; 41-3-110; 41-3-115; 41-3-701. At the point of its production, the water produced during CBNG operations does not fit within that generally accepted meaning because it has not been “impounded or used in irrigation” and then subsequently returned to the stream from which it was extracted. Instead, at the point of its production CBNG discharged water is more appropriately classified as “by-product water” as that term is defined by WYO. STAT. ANN. § 41-3-903. That statute defines by-product water as:

[W]ater which has not been put to prior beneficial use, and which is a by-product of some nonwater-related economic activity and has been developed only as a result of such activity. By product water includes, but is not limited to, water resulting from the operation of oil well separator systems or mining activities such as dewatering of mines.

Id. The appropriation of “by-product water” is supervised by the State Engineer and the Wyoming Board of Control. *See*, WYO. STAT. ANN. § 41-3-904.

Question 8: Is the Council obligated to use Appendix H, which addresses requirements applicable to produced water discharges from oil and gas production facilities, to regulate water produced in CBNG development, or may the Council enact separate and distinct regulations for CBNG development?

The Council has been given the authority to promulgate rules and regulations in accordance with the EQA. WYO. STAT. ANN. § 35-11-112(a)(i). As long as an agency does not exceed its authority and follows the appropriate procedure when promulgating such rules, generally, the agency has the flexibility to formulate the rules as it sees fit. The Council has been given the authority to “promulgate rules and regulations necessary for the administration of [the EQA], **after recommendation from the director of the department, the administrators of the various divisions and their respective advisory boards.**” WYO. STAT. ANN. § 35-11-112(a)(i) (emphasis added).² Wyoming statute also provides that the administrator has the power to recommend “that any rule, regulation or standard or any amendment adopted [] may differ in its terms and provisions as between particular types, characteristics, quantities, conditions and circumstances ...” WYO. STAT. ANN. § 35-11-110(a)(ix). Accordingly, if the Council desires to promulgate a separate and distinct section related to CBNG, it may do so. There could be a question, however, of whether the EQC may force the Wyoming Department of Environmental Quality (DEQ) to bear the expense of promulgating rules not recommended by the Director of the DEQ.

² As discussed in Question 9, the Wyoming Administrative Procedure Act (WAPA) provides the additional authority for agencies to consider citizen petitions for rulemaking.

Question 9: Is the rulemaking process for a citizen petition different than the normal rulemaking process?

The Council is an "agency" as defined by WYO. STAT. ANN. § 16-3-101(b)(i). The Council has the authority to adopt, amend, and repeal all the rules regarding the implementation and administration of the EQA. WYO. STAT. ANN. § 35-11-112. As discussed above, the rulemaking process is normally initiated by the DEQ or an Advisory Board. See, WYO. STAT. ANN. §§ 35-11-112(a)(i); 35-11-114(b). However, pursuant to the WAPA, "any interested person" may petition an agency for the promulgation, amendment or repeal of any rule. WYO. STAT. ANN. § 16-3-106. After such a petition is submitted, "the agency as soon as practicable either shall deny the petition in writing (stating its reasons for denials) or initiate rulemaking proceedings in accordance with W.S. 16-3-103." *Id.* If the Council denies the petition and decides not to proceed to rulemaking, that decision is final and not subject to review. *Id.* However, as the language of §16-3-106 indicates, if the Council decides to accept the petition and initiate rulemaking, the normal rulemaking process provided by § 16-3-103 applies. Thus, the actual rulemaking process for a citizen petition is the same once the Council decides to accept the petition and initiate rulemaking.

Question 10: What options are available to the Council regarding this particular petition? Specifically, what decisions may be made regarding the motion to dismiss related to this petition?

We cannot provide specific answers to this question at this time because the EQC staff has not forwarded the relevant documents pertaining to this petition to this Office. However, in a general sense, the options available to the Council regarding this petition are the usual options available to an agency when adopting rules. That is, the Council may adopt, not adopt, amend, or withdraw the notice of intent to adopt the rules. However, as discussed in the Formal Opinion 2006-001, the EQA does not grant the Council or DEQ the authority to regulate water quantity to ensure that all produced water from CBNG production is at all times actually used for wildlife or livestock watering or other agricultural uses. Therefore, the Council does not have the statutory authority to adopt these rules in their current form. If the Council decides it would like to withdraw the notice of intent to adopt, there are no specific statutory requirements that must be complied with in order to do so. However, it is advisable to provide the interested parties and the Secretary of State's Office with a revised decision to deny the petition for rulemaking. Such a decision is likely not subject to appeal. If the Council decides to amend the rule so that it complies with law and those amendments change the original rule so that the original notice of rulemaking was not sufficient, then a second public comment period will be necessary.

As for the motion to dismiss filed in response to the petition for rulemaking, it is important to remember that the Council is conducting a rulemaking process, not a contested case. *See*, Environmental Quality Council, Rules and Regulations, Ch. III, § 4. Accordingly, the motion to dismiss is simply information to be considered as a part of that rulemaking process, and the Council's alternatives remain the same as those mentioned above.

Question 11: Can the Council formulate rules for how a citizen can initiate a rulemaking process? Essentially, may the Council direct what must be included in a citizen petition?

The WAPA provides for citizen petitions and states that "each agency may prescribe by rule the form of the petition and the procedure for its submission, consideration and disposition." WYO. STAT. ANN. § 16-3-106. Accordingly, the Council may adopt, by rule, any procedure that it deems appropriate for the submission, consideration, and disposition of any petitions filed by interested persons. When doing so, the Council may detail the type and quantity of information the Council will require before considering such a petition. Currently, Chapter III of the Council's Rules of Practice and Procedure provide for rulemaking hearings and brief requirements for citizen petitions. If the Council would like to change these requirements, it could amend these rules.

If there are any other questions or concerns that we may address, please don't hesitate to contact this office.

Sincerely,



Patrick J. Crank
Attorney General

Michael L. Hubbard

Michael L. Hubbard
Deputy Attorney General



Bridget Hill
Assistant Attorney General

ATTACHMENT "C"
DRAFT 2 RULES POSTED BY
WATERSTREET 11/17/2008

TITLE PAGE ONLY

WATER QUALITY RULES AND REGULATIONS

Chapter 1

DRAFT

WYOMING SURFACE WATER QUALITY STANDARDS

Proposed Rules
1st Draft
(Public Notice Date)

DOCKET NO. 08-3101
DOWNLOADED & PRINTED
SEPTEMBER 10, 2009

ATTACHMENT "D"

THE STATE OF WYOMING
ENVIRONMENTAL QUALITY COUNCIL

March 27, 2009

Re: Request for Socio-Economic Study

Dear Commissioners:

The Council appreciates your participation in the Chapter 1 Water Quality Division rule making process. The Council has considered your request for a socio-economic study and has reviewed the record up to this point.

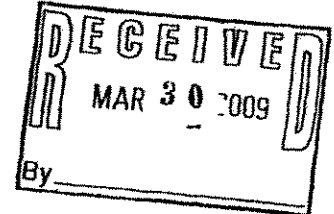
The Council is dependent on interested parties submitting testimony and other evidence during these proceedings in order to fully understand the issues and to make informed decisions. After reviewing the record to this point, the Council believes that there has been an abundance of testimony regarding the various impacts that this rule package may have, as drafted or if certain amendments were to occur. The record is still open and if there is further information that you believe would assist the Council in this very important decision, please forward that information to our office in Cheyenne.

The Council thanks you for your letters and appreciates your concerns regarding the possible impact of this rule. We look forward to reviewing any further information you feel would be helpful to the Council as it works on promulgating a rule package that takes into account all of the various involved interests.

Sincerely,


Dennis Boal
Chairman

cc: Governor Dave Freudenthal
County Commissioners of Washakie, Johnson, Weston, Park, Hot Springs
Wyoming County Commissioner Assoc.
Wyoming Farm Bureau



Dave Freudenthal,
Governor

Dennis Boal,
Chairman

Tim Flitner,
Vice-Chairman

Tom Coverdale
Secretary

John N. Morris

Dr. Fred Ogden

Catherine Guschewsky

Dave Searle

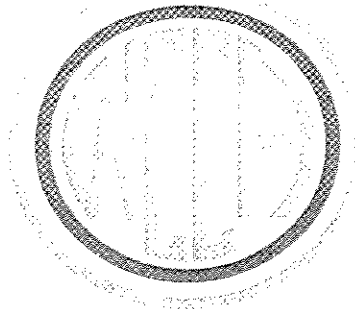
Jim Ruby
Executive Secretary

Kim Waring,
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Wyoming County Commissioners Association

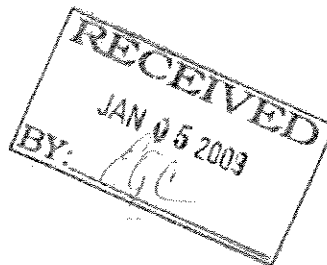


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TERRENCE D. WOLF, Vice President
JACK KNUDSON, Treasurer
JOSEPH M. EVANS, Executive Director
Website: www.wyo-wcca.org

December 31, 2008

The Honorable Dave Freudenthal
Governor, State of Wyoming
State Capitol Building
200 West 24th Street
Cheyenne, Wyoming 82002-0010



FILED

JAN 05 2009

Jim Ruby, Executive Secretary
Environmental Quality Council

Dear Governor Freudenthal:

At the recent Wyoming County Commissioners Association meeting recently held in Rock Springs, Wyoming, the commissioners passed a resolution concerning the Wyoming Environmental Quality Council's discussion on changes relating to discharged water from energy development. A copy of the resolution is attached.

The WCCA believes the actions of the Environmental Quality Council fails to include consideration of the local socio-economic impact of their actions.

The WCCA is requesting the EQC perform a stated-funded socio-economic impact analysis concerning the use of discharged water from energy development prior to any final action or recommendation.

We would appreciate your consideration of the WCCA position regarding this issue. Please call me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Joe Evans".

Joe Evans
Executive Director

encl.

xc: ✓ Jim Ruby, Executive Secretary Wyoming Environmental Quality Council

ATTACHMENT "E"
ATTACHED BY REFERENCE
ONLY (DUE TO SIZE)

TITLE PAGE ONLY

EXPERT SCIENTIFIC OPINION ON THE TIER-2 METHODOLOGY

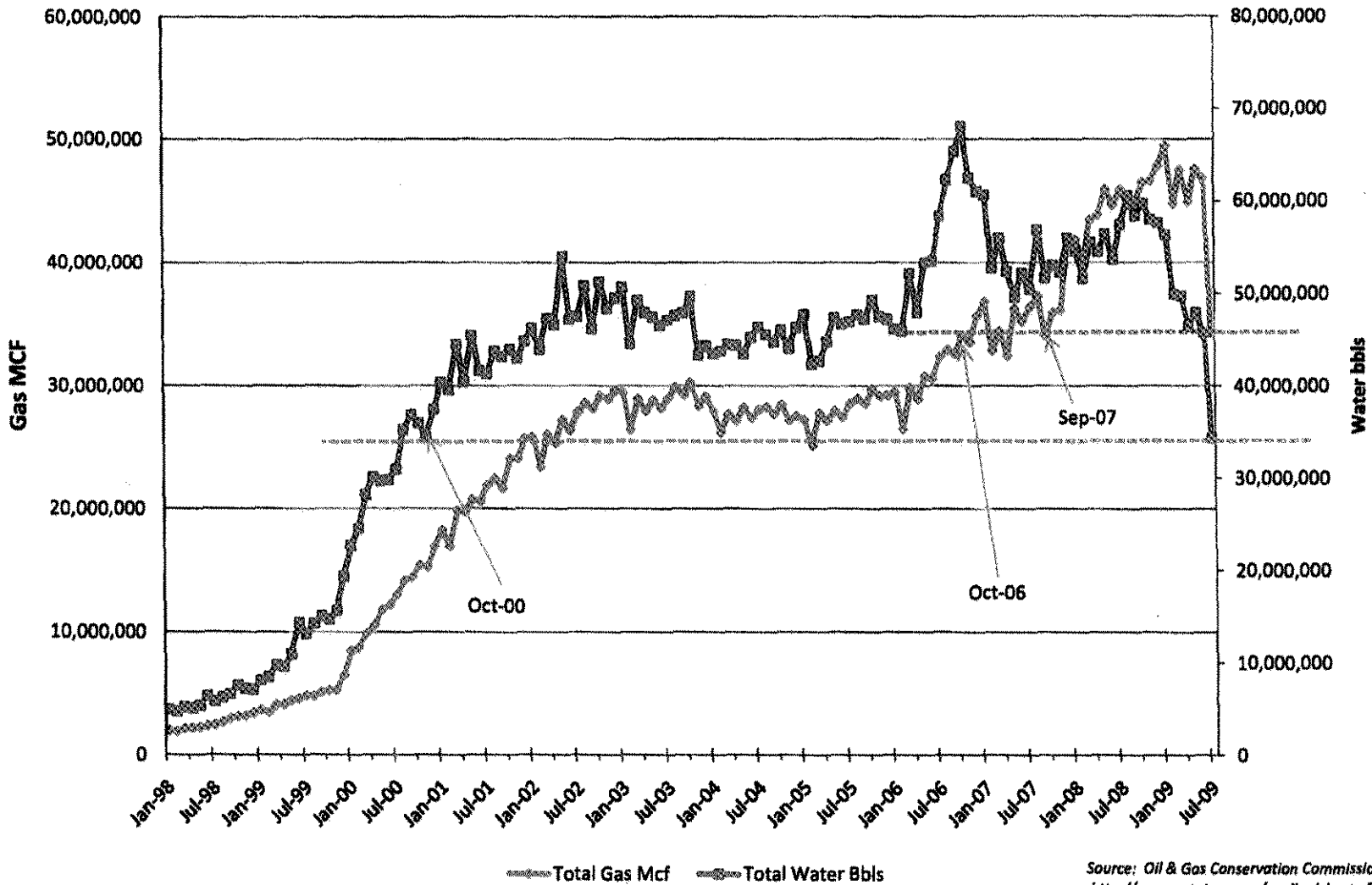
Report to the Wyoming Environmental Quality Council

Jan M.H. Hendrickx
New Mexico Tech
Socorro, NM 87801

Bruce A. Buchanan
Buchanan Consultants, Ltd.
Farmington, NM 87499

May 2009

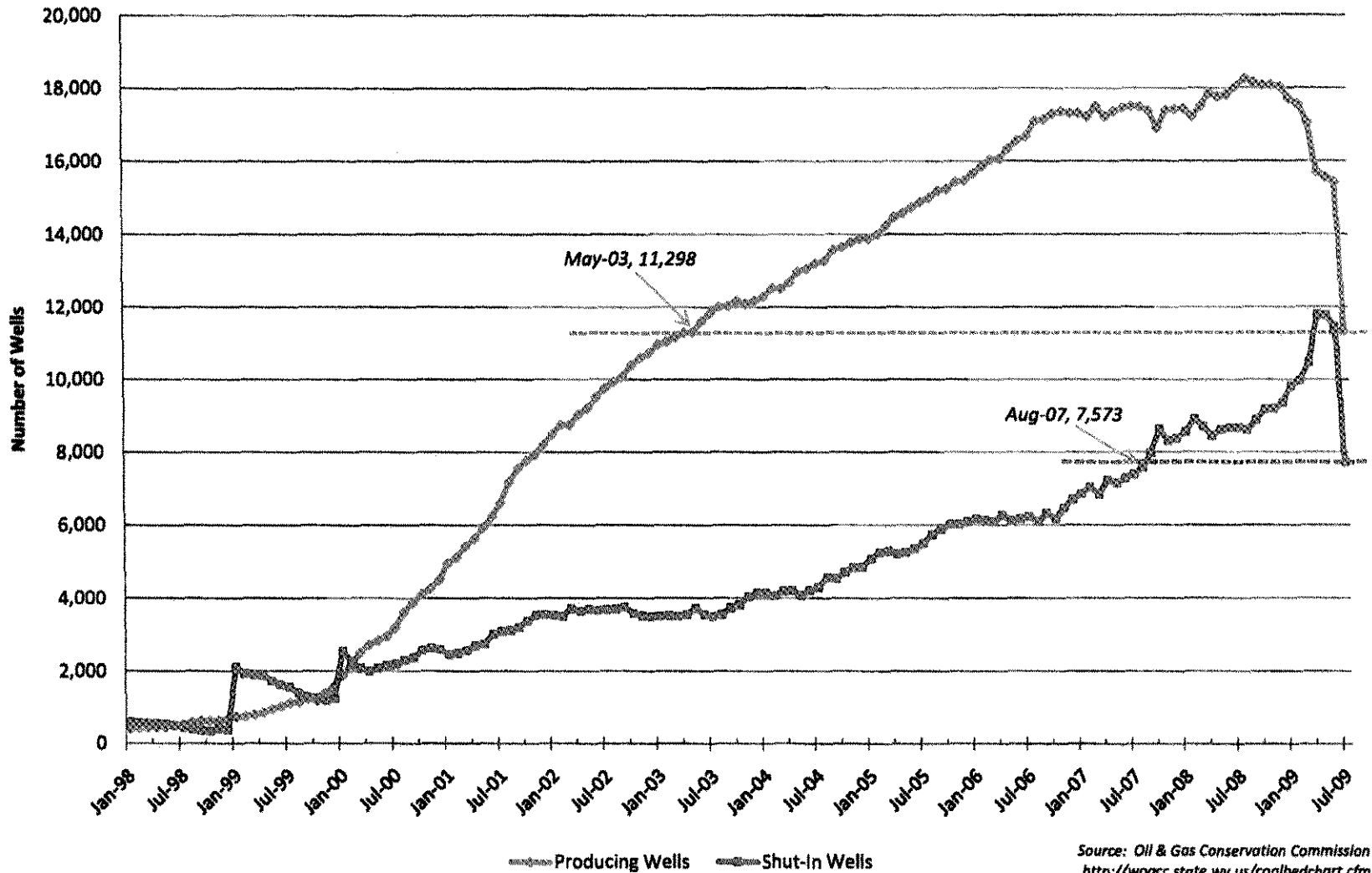
Powder River Basin Coalbed Methane Gas & Water Production by Month 1998-2009



Source: Oil & Gas Conservation Commission
<http://wogcc.state.wy.us/coalbedchart.cfm>

ATTACHMENT "F"

Powder River Basin Coalbed Methane Producing & Shut-In Wells by Month 1998-2009



Source: Oil & Gas Conservation Commission
<http://wogcc.state.wy.us/coalbedchart.cfm>

ATTACHMENT "G"