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September 18, 2009

Mr. Dennis Boal, Chairman
Environmental Quality Council
Herschler Building, Room 1714
122 W. 25th Street
Cheyenne, WY 82002

FILED
SEP 22 2009
Jim Ruby, Executive Secretary
Environmental Quality Council

RE: EQC Docket No. 08-3101
WQD Chapter 1, Appendix H
Section 20 Rules, Agricultural Water Supply

Dear Chairman Boal:

On behalf of the Board of Campbell County Commissioners, please accept the following as comments to the proposed rule adoption/revisions to WQD Chapter 1, Appendix H.

Our last communication was sent dated October 28, 2008, where we generally acknowledged your efforts and advised regarding how important the development of oil, gas and coal is, not only to our county, but to the State of Wyoming. This axiom is so obvious, there can certainly be no need to produce statistics in support of this proposition. As such, we have become increasingly concerned with how the rule making process in this instance has progressed.

Recently, a preliminary report was issued which is entitled "Expert Scientific Opinion on the Tier-2 Methodology". The Council has requested comments be limited to that report and, although difficult given the ramifications of the recommendations contained in the report, we will attempt to do so.

Based upon what has transpired in this process thus far, Campbell County would respectfully request the following:

- (1) The EQC remand the proposed rule to the Water and Waste Advisory Board for further review and possible revision in the event the EQC determines changes are required to the Tier 2 irrigation standards based upon the recent information submitted in the above referenced report.
- (2) The insertion of a “non-severability” provision into the rule will be crucial in preserving the integrity of any rule adopted. Any change to the rule by the EPA could severely alter the rule in a substantial fashion beyond its original intent.
- (3) The EQC cause the Department of Administration and Information, Division of Economic Analysis to collect and analyze data in order to provide information relative to an analysis of the “social and economic value of the source of pollution” and 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” as required by W.S. §35-11-302 (a)(vi)(B) and §35-11-302(a)(vi)(A).

Campbell County requests the foregoing as it believes that the nature of the rule as proposed is such that the removal of the Tier 2 provision as recommended by the referenced report is so substantial as to affect the character of the entire rule. It has always been Campbell County’s position that in the exercise of its rule making authority that if in the course of the rule making process, a shift is so significant as to potentially change members of the public’s view on the rule, that you are essentially starting over with a new rule.

The elimination of the Tier 2 irrigation standards would obviously be a significant change to the character of the rule and in fact, with how the DEQ has determined effluent limits for produced water discharge permits for at least three years now. Such a significant and substantive change must require the matter to be remanded for further review and consideration before acting.

In addition, to further preserve the integrity of the adoption of the rule, the insertion of a “non-severability” clause is of the utmost importance. The nature of the proposed rule is such that any possible alteration of the rule significantly affects the substance and character such that the rule in its entirety must be either accepted or struck. In addition the above referenced impact of the removal of the Tier 2 provision, the current proposed rule includes a provision for the grandfathering of pre-1998 produced water discharges and landowner waiver exemptions. We are aware that these provisions are vulnerable to attack and being stricken by the EPA. If this were to happen, the rule in its entirety needs to be struck as these provisions have been key to garnering support amongst landowners in this process. Many testified before this Council regarding the importance of utilizing the discharged water in their agricultural operations. To have these provisions struck while leaving the rest of the rule in place would be crippling to the agricultural operations within the county.

This leads to our final comment which is more accurately described as a very serious concern over the apparent lack of adherence to the law with regard to this rule making process. This concern is not new to you as we are aware that numerous counties have voiced their concerns to you and, in fact, some have initiated litigation because of the complete disregard of the provisions contained in W.S. §35-11-302(a)(vi)(A) and (B).

There can be no mistaking the clear dictates of these referenced provisions. In promulgating rules, regulations, standards and permit systems, you are *required* by the use of the word "*shall*" to consider "all the facts and circumstances bearing upon the reasonableness of the pollution involved". This is further defined to include:

- “(A) 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;
- (B) The social and economic value of the source of pollution;
- (C) The priority of location in the area involved;
- (D) The technical practicability and economic reasonableness of reducing or elimination the source of pollution; and
- (E) The effect upon the environment.”

Any rule promulgated by the EQC that changes the status quo without the DEQ complying with these requirements for developing its recommendations for rules would be unlawful.

We have examined the record contained in this docket matter and no where is there information which complies with this statutory mandate. This is despite the fact that the EQC and DEQ have found fit to generate other studies as evidenced by the above referenced report, however, neither this report or any other report or even the presentation of any such data has been generated to this point in time. Failing to do so is a clear violation of the law and none of us are above the law. Given this fact, the request to collect such data is less a comment to the proposed rule, than it is an admonishment to adhere to your statutory duty. Back in October of 2008, Campbell County ended its correspondence to you with the confidence that you would be wise and judicious in your decision making process. We fear that confidence has been misplaced if your decision making process does not include the gathering and consideration of very specific information dictated under the law.

Campbell County appreciates the opportunity to convey these comments to you and respectfully request that they be given full and sober consideration.

Sincerely,



Carol Seeger,
Deputy Campbell County Attorney
Attorney for Board of Campbell County Commissioners

cc: Board of Campbell County Commissioners
c/o Robert Palmer