

## Waring, Kim

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**From:** FLITNER@aol.com  
**Sent:** Wednesday, September 23, 2009 11:51 AM  
**To:** Waring, Kim  
**Subject:** EQC Docket ID 08-3101



### Flitner Ranch

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September 24, 2009

Chairman Dennis Boal  
Environmental Quality Council,  
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Attention: EQC Docket ID No. 08-3101

Chairman Dennis Boal:

Ladies and Gentlemen of the Wyoming Environmental Quality Council, my name is David Flitner, owner of Flitner Ranch and Hideout Adventures, located near Shell, Wyoming. Thank you for the opportunity to comment on the final report, concerning the Irrigation Section of the proposed Agriculture Use Protection Policy, by Drs. Jan Hendrickx and Bruce Buchanan (New Mexico Experts). My comments will also include livestock watering issues, which were not discussed in the Expert's Report.

Flitner Ranch and Hideout Adventures run livestock on private, State and Federal lands. Our base operation is near Shell, Wyoming and we utilize grazing lands on the Big Horns, Shell Valley, Powell/Cody and Tensleep. In 2006 we celebrated our 100<sup>th</sup> year of operation in the livestock and farming business.

Dry Creek supplies the water for hundreds of cattle from various livestock operations throughout its full length from just south of Cody to Greybull. It is also the water source for a resident antelope and wild horse herd. If Marathon Oil Co. were to suddenly stop pumping the excess water from its production wells at Oregon Basin, this entire water source would dry up and the economic as well as ecological consequences would be devastating to the livestock industry as well as the wild horse population plus hundreds of antelope and deer.

In other words, the 150,000 acre Dry Creek grazing allotment and associated water from the fresh water discharges from the Oregon Basin oil field near Cody comprises a significant portion of our entire range

operation and is essential to the core business success of the Flitner Ranch and The Hideout Adventures program.

The New Mexico Experts have determined that the methodology of determining the EC and SAR of the historic water quality applied to soils of an ephemeral drainage (Tier II Irrigation Standard) is not reasonable or scientifically defensible. Because, the New Mexico Experts do not propose an alternative, I ask that your Council remand the Irrigation Section of the policy back to the Department of Environmental Quality (DEQ) and Waste and Water Advisory Board (WWAB), so that a new scientifically defensible Tier II option can be developed and taken through the rule making process the correct way.

The Rule will prevent many potential new sources of produced water from becoming available to the agricultural community in the Big Horn Basin and across the State of Wyoming if a Tier II option is deleted. Companies would be forced to meet Tier I default standards and new oil and gas development will be severely limited. Tier I option is aimed for the most sensitive crop that most of the produced water in the state will not comply with, especially in the BHB. This may cause many new oil and gas discoveries to be uneconomic, and force companies to permanently plug wells instead of temporarily shutting them in. It will also allow for precious natural resources to never be developed. This will result in less surface water available to agriculture producers.

A grandfathering exemption is critical to the BHB's present and future discharges. At previous hearings, your council has promised us that our discharges (pre-1998 discharges) would be grandfathered, but the exemption may not withstand legal and administrative challenges. The EQC may believe this is not true, but the Wyoming Outdoor Council (WOC) and Powder River Basin Council have already challenged the concept of grandfathering in their appeal of the Chapter 1 Water Quality Rules that were passed by EQC in February of 2007. WOC also spoke against the grandfather provision at the November 6, 2008 EQC hearing in Thermopolis. The environmental community will challenge this grandfather provision in court, that move is very predictable. The EPA (who also has to approve the rule) has also questioned the legal and scientific validity of the grandfather provision. It is therefore essential to include a 'non-severability' provision in the rule that would require the EPA to approve or disapprove the rule in full. If any provision of the rule is struck (including the grandfather provision) then the entire rule would be invalid.

I urge the Council to retain the landowner waiver in the proposed rule. This would allow landowners to decide what is best for their livestock and land, and waive the water quality standards when the landowner believes it to be a benefit. However, even if the Council retains the irrigation waiver, it might not withstand scrutiny. Once again, WOC and PRBRC have requested that any waiver be limited to the application of water on a landowner's own land, and no use of the stream channel. EPA has also challenged the landowner waiver. A non-severability clause is critical in this case, as well.

The effects of this Rule/Policy could be devastating the Big Horn Basin as well as to our entire state. Our ranch and recreation businesses employ some fifty people during the peak season. Both the livestock and recreation business are dependent on the lands served by the freshwater discharges that make up the total flow of Dry Creek. The cattle utilize Dry Creek as a sole water source in the area. The Hideout *cowboy adventure* guests who come from all quarters of the globe, participate in gathering and moving the livestock in the in this area. The BLM permit associated with this portion of the ranch consists of over 150,000 acres. Our ranch employees and guests work with the livestock in the area in both the spring and fall every year.

Because of the potential widespread effects of the proposed rule to my ranch and then to Wyoming as a whole, DEQ and EQC should complete a socio-economic study that considers a cost/benefit or risk analysis. Numerous County Commissioners have asked the EQC to complete this report and I share their concern: A loss of produced water discharges would severely impact local businesses, schools, the local economy and county revenues. Such a risk fully warrants a socio-economic impact and analysis. The EQC is bound by law (under the Environmental Quality Act) to consider the balancing criteria (which include the socio-economic analysis).

None of the technical experts retained by the DEQ and EQC performed such a risk analysis so the socio-economic impacts of the scientist's recommendations have not been identified or quantified. However, at the same time we have been asking for socio-economic information, technical experts have been retained by the EQC and DEQ. According to the law; both factors (in addition to many other balancing criteria) must be analyzed. But it seems as though technical impacts have been prioritized over a socio-economic impact analysis – a clear violation of the Wyoming Environmental Quality Act. Before rules are created, it is essential that Wyoming invests time and money into analyzing what will happen if the rule is adopted.

I also ask that the numeric Livestock Drinking Water Standards do not change from 5,000 mg/l TDS, 2,000 mg/l chloride and 3,000 mg/l sulfate. A 'measurable decrease' has not been noted in any agricultural operation in the BHB and new numeric changes are absolutely not needed. Additionally, the work by Dr. Raisbeck did not specifically calculate the *benefit and value* of providing produced water to livestock. A new report should be created that examines the cost vs. the benefit as well as what the consequences would be if new numeric water standards are adopted. A waiver in this portion of the Rule is critical because it must not be struck out of the rule when the EPA revises it.

As the result of our personal experience with our livestock operation which has used the Dry Creek water source for years with only positive results, we suggest the following:

1. Any policy formulated should not interfere with landowners or permittees on Federal and State leases who desire to use CBNG produced water to improve their property or sustain a livestock operation.
2. The policy should allow landowners to use and receive the water even if it does not meet DEQ's "standards."
3. The landowners/ranch managers are in the best position to evaluate the impact on their livestock even if the water does not meet DEQ standards and in a better position to evaluate whether water that exceeds "standard" is beneficial to his lands and livestock. Often Big Brother is not close enough to the situation to accurately evaluate all the physiological and economic factors that go into making a decision that is realistic.
4. One of the great challenges in the livestock industry in Western range grazing areas is the proper distribution of livestock and wildlife by utilizing water sources to all uniform utilization of grazing in a given area. Historic water uses could easily be disrupted by imposing unrealistically rigorous water quality standards. This would be devastating to livestock, wild horse and wildlife populations.

Great caution should be exercised by any regulatory entity in the State to ensure that overly zealous regulations do not destroy the fragile balance that has taken over a hundred years to establish.

Thank you for the opportunity to comment. I would hope that the Board would seriously consider the immense economic and social implications any further water quality decisions would have to all the interests involved who see no need for further regulations.

Thank you for the time you spent considering my comments.

Sincerely,

David Flitner, owner Flitner Ranch and Hideout Adventures