

**FILED**

**APR 06 2009**

**Jim Ruby, Executive Secretary  
Environmental Quality Council**

Mark R. Ruppert, P.C. (Wyo. Bar No. 6-3593)  
Jere C. (Trey) Overdyke, III (Wyo. Bar No. 6-4248)  
HOLLAND & HART, LLP  
2515 Warren Ave., Suite 450  
P. O. Box 1347  
Cheyenne, WY 82001  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175

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 ANSWER TO PETITION**

Pennaco Energy, Inc. (Pennaco), by and through counsel, Holland & Hart LLP, submits the following answer in response to John D. Koltiska, AC Ranch, Inc., Prairie Dog Ranch, Inc., and Prairie Dog Water Supply Company's (Petitioners) Petition in appeal of DEQ's issuance of WYPDES Permit No. WY0054364 dated January 6, 2009 (Permit):

1. Upon the extent of Pennaco's information and belief, Pennaco admits the allegations contained in Paragraph 1 of Petitioners' Petition.

2. Pennaco admits the allegations contained in Paragraph 2 of Petitioners' Petition.

3. Statement of Facts

a. Upon the extent of Pennaco's information and belief, Pennaco admits the allegations contained in Paragraph 3(a) of Petitioners' Petition as it relates to Koltiska's irrigation from Wildcat Creek. Pennaco is without sufficient information or belief to admit or deny the remaining allegations contained in Paragraph 3(a) of Petitioners' Petition relating to Prairie Dog Creek and therefore denies the same.

b. Upon the extent of Pennaco's information and belief, Pennaco admits the allegations contained in Paragraph 3(b) of Petitioners' Petition.

c. Upon the extent of Pennaco's information and belief, Pennaco admits that AC Ranch, Inc. is the owner of ranchlands in Sheridan County, Wyoming, portions of which lie on Wildcat Creek downstream of Outfalls 001 and 002. Pennaco admits that WYPDES Permit No. WY0054364 allows certain discharges in Wildcat Creek but affirmatively states (1) that a pending modification to the permit removes from the permit Outfall 001 – the only Outfall that discharges directly to Wildcat Creek; and (2) that a pending modification to the permit adds a containment requirement to Outfall 002 discharges into the Paul #3 reservoir and such discharges must be contained in the reservoir unless a precipitation event causes natural overtopping limited to a 48-hour period. Pennaco denies the remaining allegations contained in Paragraph 3(c) of Petitioners' Petition.

d. Upon the extent of Pennaco's information and belief, Pennaco admits that Prairie Dog Ranch, Inc. is the owner of ranchlands in Sheridan County, Wyoming, but is without sufficient information or belief to admit or deny the allegations regarding the location of those lands and therefore denies the same. Pennaco admits that WYPDES Permit No. WY0054364 allows certain discharges in Prairie Dog Creek and Wildcat Creek but Pennaco affirmatively states (1) that a pending modification to the permit removes Outfall 001 from the permit – the only Outfall that discharges directly to the Wildcat Creek; and (2) that a pending modification to the permit adds a containment requirement to Outfall 002 discharges into the Paul #3 reservoir and such discharges must be contained in the reservoir unless a precipitation event causes natural overtopping limited to a 48-hour period. Pennaco denies any remaining allegations contained in Paragraph 3(d) of Petitioners' Petition.

e. Upon the extent of Pennaco's information and belief, Pennaco admits that Prairie Dog Water Supply Company (PDWSC) supplies irrigation water to its shareholders in the Prairie Dog Creek drainage and that one or more shareholders may have points of diversion downstream of the discharge permitted by WY0054364. Pennaco is without knowledge or information sufficient to form a belief as to the truth of PDWSC shareholders' diversions downstream of Outfall 003 and therefore denies the remaining allegations contained in Paragraph 3(m) of Petitioners' Petition.

f. Pennaco admits the allegations contained in Paragraph 3(f) of Petitioners' Petition. To the extent Paragraph 3(f) relates to Wildcat Creek, Pennaco affirmatively states that a pending modification to the permit removes Outfall 001 from the permit – the only Outfall that discharges directly to the Wildcat Creek.

g. Pennaco admits the allegations contained in Paragraph 3(g) of Petitioners' Petition as it relates to Prairie Dog Creek. Pennaco admits that WYPDES Permit No. WY0054364 allows certain discharges in Paul #3 reservoir on Wildcat Creek. To the extent Paragraph 3(g) relates to Wildcat Creek, Pennaco affirmatively

states that (1) a pending modification to the permit removes from the permit Outfall 001 – the only Outfall that discharges directly to Wildcat Creek; and (2) that a pending modification to the permit adds a containment requirement to Outfall 002 discharges into the Paul #3 reservoir and such discharges must be contained in the reservoir unless a precipitation event causes natural overtopping limited to a 48-hour period.

h. Upon the extent of Pennaco's information and belief, Pennaco admits that AC Ranch, Inc., owns lands to which there are water rights for irrigation from Wildcat Creek but is without sufficient information or belief to admit or deny whether such water rights are adjudicated and therefore denies the same. Pennaco admits that the lands and their respective points of diversion are located on Wildcat Creek downstream of Outfalls 001 and 002. However, Pennaco affirmatively states (1) that a pending modification to the permit removes Outfall 001 from the permit – the only Outfall that discharges directly to the Wildcat Creek; and (2) that a pending modification to the permit adds a containment requirement to Outfall 002 discharges into the Paul #3 reservoir and such discharges must be contained in the reservoir unless a precipitation event causes natural overtopping limited to a 48-hour period.

i. Pennaco generally denies the allegations contained in Paragraph 3(i) of Petitioners' Petition as to Outfall 001. Pennaco affirmatively states that a pending modification to the permit removes Outfall 001 from the permit – the only Outfall that discharges directly to the Wildcat Creek. Pennaco is without sufficient information or belief to admit or deny the allegations in Paragraph 3(i) as to Outfall 002 and therefore denies the same. Pennaco also affirmatively states that a pending modification to the permit adds a containment requirement to Outfall 002 discharges into the Paul #3 reservoir and such discharges must be contained in the reservoir unless a precipitation event causes natural overtopping limited to a 48-hour period.

j. Upon the extent of Pennaco's information and belief, Pennaco admits that Prairie Dog Ranch, Inc., and AC Ranch, Inc., own lands to which there are water rights for irrigation but is without sufficient information or belief to admit or deny whether such water rights are adjudicated and therefore denies the same. Upon the extent of Pennaco's information and belief, Pennaco admits that water for irrigation on portions of the lands is diverted from Prairie Dog Creek downstream of Outfall 003.

k. Pennaco admits that water discharged under the Permit from Outfall 003 will be discharged into Prairie Dog Creek. Pennaco is without information or knowledge sufficient to form a belief as to the truth that the water discharged from Outfall 003 is a source of irrigation water for AC Ranch, Inc. and Prairie Dog Ranch, Inc., and therefore denies the remaining allegations contained in Paragraph 3(k) of Petitioners' Petition.

l. Upon the extent of Pennaco's information and belief, Pennaco admits that PDWSC shareholders have water rights to lands located along Prairie Dog Creek and Wildcat Creek but is without sufficient information or belief to admit or deny

whether such water rights are adjudicated and therefore denies the same. Pennaco is also without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 3(l) and therefore denies the same.

m. Pennaco admits that water discharged under the Permit could co-mingle with water in Prairie Dog Creek. Pennaco is without knowledge or information sufficient to form a belief as to the truth of PDWSC shareholders' diversions downstream and therefore denies the remaining allegations contained in Paragraph 3(m) of Petitioners' Petition.

n. Pennaco denies the allegations contained in Paragraph 3(n) of Petitioners' Petition.

o. Pennaco admits that the Permit allows discharge of water with EC and sodium levels that may be higher than background levels in Prairie Dog Creek where background levels are measured. Pennaco is without knowledge or information sufficient to form a belief as to the background levels of the constituents in Prairie Dog Creek at the point of discharge and therefore Pennaco denies this allegation contained in Paragraph 3(o) of Petitioners' Petition. Pennaco otherwise denies the allegations contained in Paragraph 3(o).

p. Pennaco denies the allegations contained in Paragraph 3(p) of Petitioners' Petition.

q. Pennaco denies the allegations contained in Paragraph 3(q) of Petitioners' Petition.

r. Pennaco denies the allegations contained in Paragraph 3(r) of Petitioners' Petition.

s. Pennaco denies the allegations contained in Paragraph 3(s) of Petitioners' Petition.

4. Pennaco denies that Petitioners are entitled to a hearing or the remaining relief requested in Paragraph 4 of Petitioners' Petition.

#### **GENERAL DENIAL**

Pennaco denies each and every allegation not specifically admitted herein.

AFFIRMATIVE DEFENSES

1. The Environmental Quality Council lacks subject matter jurisdiction over Petitioners' Petition.
2. Petitioners lack standing to bring this Petition.
3. Petitioners have failed to state a claim on which relief may be granted.

WHEREFORE, Pennaco respectfully requests the Environmental Quality Council dismiss the Petition and/or affirm issuance of the Permit.

Respectfully submitted April 6, 2009.



Mark R. Ruppert, P.C., Bar No. 6-3593  
Jere C. (Trey) Overdyke, III, Bar No. 6-4248  
HOLLAND & HART LLP  
P. O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175

ATTORNEYS FOR PENNACO ENERGY,  
INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 6, 2009, I served the foregoing **Pennaco Energy, Inc.'s Answer to Petition** to the following by:

Mike Barrash  
Wyoming Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002  
jburbl@state.wy.us  
mbarra@state.wy.us

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

Kate M. Fox  
J. Mark Stewart  
DAVIS & CANNON, LLP  
422 W. 26th Street  
P. O. Box 43  
Cheyenne, WY 82003  
kate@davisandcannonchey.com  
mark@davisandcannonchey.com

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



---