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FILED

SEP 15 2009

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

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

IN THE MATTER OF THE APPEAL OF)
POWDER RIVER BASIN RESOURCE) DOCKET NO. 09-3807
COUNCIL, AND WILLIAM F. WEST)
RANCH, LLC FROM WYPDES)
PERMIT NO. WY0094056)

PETITIONERS' RESPONSE TO THE WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY'S MOTION TO CONTINUE PRE-HEARING
CONFERENCE

Petitioners Powder River Basin Resource Council (PRBRC) and William F. West Ranch, through their undersigned attorneys, submit herewith their response to the Wyoming Department of Environmental Quality's (DEQ) Motion to Continue Pre-hearing Conference. For the reasons stated below, the motion should be denied and the pre-hearing conference should be held as scheduled.

Petitioners oppose the motion for three reasons. First, it is pure speculation that the rulemaking hearing on September 30, 2009 will determine the issue regarding DEQ's Tier 2 methodology for establishing effluent limitations for agricultural protection. Second, it is speculative to assume that the hearing in Docket 09-3805 will come to pass. Third, and most important, the discharges under the permit Petitioners are appealing continue.

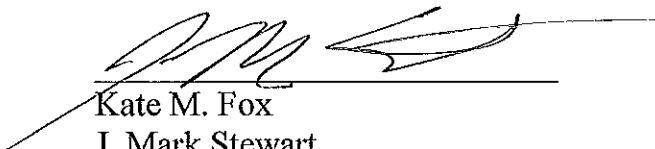
While some of the issues regarding the Tier 2 permitting procedure and DEQ's use thereof which may be argued in a hearing on this matter may also be considered by the Council during its rulemaking hearing on September 30, 2009, the history of this rulemaking does not indicate that those issues will be resolved. DEQ's permitting policy has been under consideration by either the Water and Waste Advisory Board or the EQC since November 2004. (Ex. 1., Testimony of Bill DiRienzo, Transcript of Water and Waste Advisory Board, August 2, 2006, p. 11). DEQ adopted the three tiered permitting approach in 2006. *Id* at 12. The EQC directed that DEQ draft a rule for agricultural protection in February 2007. (Ex. 2, Environmental Quality Council Meeting Minutes of

February 16, 2007, p.3). The rule has been under consideration since June of 2008. Petitioners are justifiably less than sanguine that the issues raised in the permit appeal regarding Tier 2 will be finally decided by the EQC on September 30, 2009.

Secondly, there is no guarantee that the contested case hearing scheduled in Docket No. 09-3805 will actually be held. Again, the track record of WYPDES Permit appeals settling on the eve of hearing is well established, with the appeal in Docket No. 08-3802 being but the latest example.

Finally, while the Council's decision in the rulemaking is awaited, the discharges authorized by the permit continue. Furthermore, even if the Council disapproves the rule on September 30, there is no guarantee that the discharges authorized by the permit under appeal will cease nor that DEQ will rescind the numerous existing Tier 2 permits, including Permit No. WY0094056. Neither is there a guarantee that upon disapproval of the rule DEQ will cease using Tier 2 as a policy. Therefore, Petitioners request that DEQ's motion be denied and that the scheduling conference be held as scheduled.

DATED this 15th day of September, 2009.



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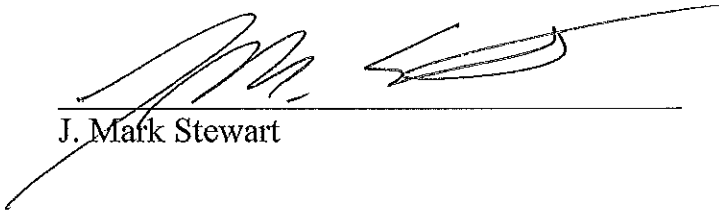
CERTIFICATE OF SERVICE

I certify that on the 15th day of September, 2009, I served a true and correct copy of the foregoing by U.S. mail, email or by hand delivery to:

Chairman Environmental Quality Council
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J. Mark Stewart

1 BEFORE THE WATER AND WASTE ADVISORY BOARD
2 OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY

3 -----
4 IN RE:

5 PUBLIC MEETING ON RECOMMENDATIONS ON
6 THE 5TH DRAFT OF THE PROPOSED
7 AGRICULTURAL USE PROTECTION POLICY
8 ASSOCIATED WITH THE CURRENT TRIENNIAL REVIEW
9 OF THE STATE SURFACE WATER STANDARDS
10 -----

11 9:38 a.m., Wednesday
12 August 2, 2006

13 TRANSCRIPT OF PUBLIC MEETING PROCEEDINGS

14 PURSUANT TO NOTICE duly given to all parties in
15 interest, this matter came on for public meeting on the
16 2nd day of August, 2006, at the hour of 9:38 a.m., at the
17 Bozeman Trail Steakhouse & Conference Center, 675 East
18 Hart Street, Buffalo, Wyoming, before the Water and Waste
19 Advisory Board of the Department of Environmental Quality,
20 Chairman Glenn Sugano presiding, with Mr. Joseph Olson,
21 Mr. Bill Welles and Barry Floyd, Board Members.
22 Director John Corra, Mr. John Wagner and Mr. Bill DiRienzo
23 also in attendance.

24
25

1 MR. DIRIENZO: Thank you, John. Members of
2 the board.

3 I have a couple of printouts of this presentation
4 that I'm going to make. I warn you upfront I'm probably
5 going to be there for a while. I have about 50 slides, so
6 I encourage questions, stopping me, get clarification as we
7 go through. So how long it will take to go through the
8 whole presentation, I can't say for sure.

9 What I'm going to be talking about here today is
10 I'm going to talk about -- well, pretty much from square
11 one, what the policy's about, how we got there, the
12 evolution of it and then the particulars of what the issues
13 are that have been raised throughout the whole process.
14 And what the position of the agency is at this time and as
15 it is expressed in the policy. I hope I can be clear, but
16 please feel free to stop me and discuss anything you want
17 to discuss along the way.

18 To begin with, the basic purpose of the policy is
19 to translate the narrative goal that's contained in Section
20 20 of Chapter 1 into measurable and enforceable permit
21 limits. And it's important to know that the policy is in
22 particular to coal-bed methane discharges, although that
23 has been the driver, that's been the interest of our
24 comments and that's where the focus is on, how coal-bed
25 methane discharge has made effects agricultural uses.

1 And in the rules there's really two sections that
2 are critical. First one is Section 3. Chapter 1, Section
3 3 just identifies the types of uses that are protected,
4 that are designated on Wyoming waters, agricultural uses
5 being one of those. And in Section 3, agricultural use is
6 described as either irrigation or stock watering. So
7 that's based -- those are the uses that the policy is
8 intended to address.

9 Then specifically Section 20 is a criteria
10 section. It's a narrative criterion and it basically
11 explains on which waters that agricultural protection is
12 designated. And then it prescribes the level of protection
13 that will be afforded to those uses. And -- no, go back,
14 Jason.

15 What it says specifically is that ag uses are
16 designated on all waters. We don't interpret that to mean
17 that both irrigation and livestock use occurs or is an
18 existing use or is necessarily protected on all waters, but
19 at least one or the other is, and we do interpret the
20 livestock watering does apply on water's agricultural
21 uses -- irrigation uses occur on some waters. And the
22 level of protection that's afforded is just this narrative
23 goal whereby the degradation of such waters should not be
24 to such an extent as the cause of measurable loss or
25 decrease in crop or livestock production.

1 Under policy, like I said, it assumes all waters
2 are used for livestock, so there is a section of the policy
3 which prescribes different types of chemical constituents
4 we believe are necessary to provide good drinking water
5 supply for livestock, and those are applied wherever
6 discharge is occurring. And whether applied by all waters.
7 And those limits that are expressed in the policy, they're
8 basically based on published recommendations from a variety
9 of sources. And those are basically theoretical values.
10 There are ag extension offices, there are a great many
11 agricultural applications in the literature that express
12 recommended values for different constituents for livestock
13 watering, and, frankly, a lot of them are across the board.

14 We have selected what we're using our best
15 judgment at this point to make a list of which constituents
16 we think are important, which are -- have a possibility of
17 being found in natural ground waters and we have placed a
18 list in there for livestock production -- for livestock
19 protection and livestock -- that's basically -- it's not
20 real complicated. That's basically all there is to it, is
21 managing the chemistry of the water so that it's safe for
22 livestock to drink.

23 Now, aside from public recommendations, the
24 policy also allows limits to be set based on background
25 water quality. That would represent the actual historic

1 use in any particular water, the quality of the water that
2 the animals were exposed to. Both of those in theory
3 should meet the standard goal of no measurable decrease.
4 If the water that is -- if we protect water to its
5 background quality, that is the quality that the animals
6 have always been exposed to, it shouldn't result in a loss
7 of use -- or loss of production.

8 And then finally, the policy does allow a
9 diversion from either background or the published values in
10 specific circumstances where a landowner may request the
11 use of the water, even if it is worse than either
12 background or the published values that has a limited
13 application. In order to do that we have to make sure --
14 in that case the landowner would accept a risk to his
15 animals. He may say, well, I want the water anyway and
16 better with the water than without it, I'll take the risk
17 of that lower quality, and so long as he is the only one
18 who is exposed to that risk, we would allow it.

19 So if the water is maintained or contained on his
20 property, available to his animals, then those kind of
21 circumstances, that would be allowed.

22 UNIDENTIFIED FEMALE: I have a question.

23 MR. DIRIENZO: Yes.

24 UNIDENTIFIED FEMALE: On that last -- the
25 last bullet you are explaining landowner preferences, is

1 that a relatively -- I'm asking about the landowner
2 preferences that -- is that an agreement that the landowner
3 participates fully in?

4 MR. DIRIENZO: The question is, is that
5 required, the landowner participates in that decision.

6 Yes, that would be the -- that's the basic
7 concept. The landowner would actually make a request to
8 DEQ that, you know, to come along, it would have to be an
9 agreement between him and the producer that he wants that
10 water and makes some arrangement to make sure that water
11 stays on his property and would only affect his livestock.
12 And so, yeah, he's involved, but the landowner doesn't want
13 lower quality water, then it's not possible. It would be
14 held to either the published values or background quality.

15 And, of course, the policy addresses irrigation
16 use. And this is a lot more complicated. There's a lot
17 more variables involved in irrigation uses. There's
18 different crops, different soils, different water
19 qualities, different management techniques that could be
20 used, all which affect production, but the basic concept is
21 to translate that narrative goal into effluent limits for
22 electrical conductivity and SAR. And that can be done
23 either on a site-specific permit-by-permit basis or in a
24 general watershed-basis and we are in the process of
25 developing watershed based permits, which would develop

1 limits for a whole area rather than for any specific
2 discharge.

3 The policy has been floating around for quite a
4 long time now. This is the fifth draft and basically it's
5 just the chronology of those drafts. The first draft we
6 published in November 2004. The advisory board held a
7 meeting on that draft in March in Casper, March 2005. We
8 then, as a result of that meeting, published a second
9 draft, which the advisory board dealt with at a meeting in
10 Lander in September 2005. Third draft was heard at the
11 advisory board meeting in January in 2006. And then
12 subsequent to that, we published a fourth draft to comment
13 on it, responded to those comments and then published this
14 fifth draft.

15 There wasn't a meeting involved there, the
16 advisory board never had a meeting on the fourth draft, and
17 so the -- and what we have before us now is the fifth
18 draft, then, which, frankly, we hope is the final draft.

19 The first draft was drafted in-house by DEQ. And
20 essentially I'm calling it a bare-bones version on this
21 slide. At that first meeting in March, the thrust of the
22 comment we received on that first draft was that it was a
23 good standard, but it wasn't -- it was lacking a lot to
24 make it a truly usable document, and so the board
25 recommended that we put together a work group of technical

1 experts, agricultural experts, to add some flesh to the
2 document and to the procedures in it so that it was clearer
3 and more usable as to actually calculating effluent limits.

4 So we did that. We put together a group. It was
5 a small group. It was myself and Jason Thomas and
6 Dr. Ginger Paige from the University of Wyoming and
7 Kevin Harvey, and Bill Shaffer, both of whom are
8 consultants and ag experts. We met in June and we
9 developed this three-tier process that is contained in the
10 policy for irrigation protection and added some technical
11 details.

12 Then that second draft -- and that's what came
13 together as a second draft. That was published for
14 comment, again, in August of 2005 and the board met in
15 September. That second draft we really received a limited
16 amount of comment on the ag policy itself. Most of the
17 comment we received, this was and is in conjunction with
18 the triennial review for Chapter 1, and most of the
19 comments received at that point were on other segments of
20 the rule. There was comment on the ag policy, but it
21 wasn't -- it was really a small amount as compared to what
22 we have gotten since.

23 And in that second draft, one of the big issues
24 is bottomlands. And I'll be talking about the specifics of
25 that later on here, but one of the big differences in that

1 second draft was there was no protection for bottomlands,
2 no irrigation protection for bottomlands. Essentially we
3 would apply irrigation protections under that draft, only
4 where there was an artificial diversion, actual mechanism
5 for diverting water out of the stream for application on
6 the land. Naturally irrigated bottomlands were not
7 considered irrigated lands, so we took comment on that and
8 we published a third draft in November.

9 And there were -- like I said, there wasn't a lot
10 of comment. And the third draft only had minor
11 modification from the second draft. After that draft was
12 published in December, we got a letter from the university
13 from Dr. Paige, who was on the work group. And she had
14 seen the application of the third draft and was concerned
15 that it really didn't express her understanding of what the
16 work group had concluded and that it was lacking in several
17 areas. And we thought that was a pretty significant thing,
18 pretty significant objection.

19 Since it was a small technical work group, we
20 thought we had consensus, but we did not. So we reconvened
21 the work group and everybody came back to that, except
22 Bill Shaffer was not available. We had another meeting,
23 just DEQ -- the DEQ office in January. And this was before
24 the board meeting in January, where, as a result of that
25 meeting, the agency we decided that the policy probably

1 should be amended, based on input from Dr. Larry Munn, who
2 was there, along with Ginger Paige from the university.
3 They made a strong argument the policy was weak in some
4 areas and really needed to be amended.

5 But the third draft was already published, so we
6 went to the advisory board in January, still with that
7 third draft. And what we were asking the board at that
8 time was we explained that situation with the new
9 information, offered to make those changes and to get a
10 recommendation and move it to the Environmental Quality
11 Council, the board did not -- pretty much -- the board
12 rejected that idea, thought it was -- since those changes
13 were so significant, that it probably needed another run
14 through public comment, so asked that we re-publish it with
15 the changes, take comment, then produce fifth draft, which
16 we did, and that's what we have here today.

17 That fourth draft was published, then, in March.
18 And it now contains the substantial revisions from the
19 previous drafts. We added protection for naturally
20 irrigated bottomlands, that those would be treated
21 essentially the same as artificially irrigated lands. We
22 changed the previously prescribed reference for salinity
23 tolerance values.

24 Prior to -- in the third draft, the primary
25 reference was going to be a publication from Bridger plant

1 materials centered in Montana. And we have since changed
2 that to using the USDA national salt tolerance database.
3 Those are numbers that were produced out of their salinity
4 laboratory in Riverside, California.

5 The basic reason for that was the Bridger
6 plant -- we did contact the author of the salinity values
7 from Bridger, and after discussion with him, he sort of
8 recommended that we didn't use his values for the purpose
9 that we were suggesting. And one of the big problems was
10 that his study didn't involve studying the entire root zone
11 and wetting and salinity through the whole root zone, was
12 basically dealing with the upper 6 inches of soil.

13 So we then decided to go with the USDA numbers,
14 and that's a significant change, because the USDA numbers
15 are significantly more stringent. For example, one plant
16 that jumps out, alfalfa. The Bridger document would
17 recommend a soils salinity value of 4 for alfalfa. USDA
18 numbers would cut that back, back to 2. So that is a
19 significant change.

20 Another significant change is we added a default
21 cap on SAR. And the reason for that is to avoid a
22 potential buildup of sodium in the soil. If you apply high
23 SAR waters to poorly drained soils, like would potentially
24 exist behind spreader dikes and things like that, and in
25 many of the areas in coal-bed country and really not

1 knowing as a default what kind of land the water was being
2 applied to, that it made sense as a default to cap it and
3 not just use numbers extrapolated off the Hanson chart.

4 For example, if you were growing plants that had
5 soil -- a salt tolerance value of say 3,000 micromoles per
6 centimeter, whatever the value is, that might allow, under
7 the Hanson diagram, an SAR of 15, 17, 18. I don't know
8 what it is off the top of my head, but it would be up in
9 that range. And still you would have no reduction in
10 infiltration of the soil, you wouldn't expect damage for
11 it, but the problem expressed to us comes in when that
12 quality of water might not be available anymore.

13 If you apply water with the higher SAR and the
14 high salinity, that's fine until the source of that higher
15 salinity goes away. If the background water quality was
16 better than that, and produced water then stopped, you
17 would have a potential for the damage to occur at that
18 point, because you would have built up excess sodium in the
19 soil. The concept of the cap is to avoid that
20 circumstance.

21 And as a final measure we added a reasonable
22 access requirement. And this seemed to us to become
23 necessary when we made the changes to the default
24 procedures, because with the changes we made, the default
25 procedures became much more stringent than they were in the

1 previous drafts and their real application has become much
2 more limited, and so the default procedures in practice,
3 the way they are written now, really only apply in
4 circumstances where the produced water is of very high
5 quality, because the default numbers that are produced are
6 very conservative.

7 So if you either have very high quality discharge
8 or you are applying it on a very salt tolerated crop,
9 unless either or both of those circumstances exist, you're
10 probably going to be pushed into doing a site-specific
11 study, either to background or no-harm analysis kind of
12 study is what we're talking about.

13 So since that occurred, in order to have a
14 reasonable program, in order to try and get the best
15 effluent limits that we can get, it requires that you be
16 able to collect data in order to establish what those
17 values should be. And we wanted to avoid a circumstance
18 where leverage could be used to say, well, by not granting
19 access, I can twist what those -- what those actual values
20 should be. And we just thought that it was important to
21 have some ability to collect that data.

22 UNIDENTIFIED FEMALE: I have a question.

23 MR. DIRIENZO: Yes.

24 UNIDENTIFIED FEMALE: Can you further
25 define reasonable access? Does that mean that you guys or

ENVIRONMENTAL QUALITY COUNCIL

Meeting Minutes

February 16, 2007

Members Present: Mark Gordon, Chairman; Jon Brady, Vice-Chair; Richard C. Moore, Secretary; Sara Flitner, John Morris, Wendy Hutchinson, Dennis Boal

Others Present: Terri Lorenzon, Director, Environmental Quality Council; Joe Girardin, Paralegal, Environmental Quality Council; Kim McGee, Executive Assistant, Environmental Quality Council; Bridget Hill, Asst. Attorney General

1. Call to Order:

Chairman Gordon called the meeting to order.

2. Chapter 1, Surface Water Standards:

Chairman Gordon opened the floor for discussion among the Council. Mr. Moore moved that the Council adopt Chapter 1, Surface Water Standards, Docket No. 06-3819 as proposed in the December, 2005 EQC draft of the Department of Environmental Quality. Mr. Brady seconded the motion. Chairman Gordon asked for discussion.

Mr. Moore moved to remove Appendix H from the rule package and leave it as a policy. Ms. Hutchinson seconded the motion. Chairman Gordon asked for discussion. Mr. Moore stated that he respected Mr. Corra's recommendation that the Council leaves it as a policy for now. He would expect Mr. Corra to look seriously at the problems that have been identified, including the uncertainty of the policy provides and decide whether to bring it back to the EQC in a revised form of a rule at a later date. Ms. Flitner stated that she had heard the desire for certainty and she does not think that policy provides certainty. Mr. Brady agreed that he wants certainty and he would vote against having Appendix H go as a policy.

Mr. Boal reminded everyone that he stated in the past, that it's a policy that everybody hates but nobody wants to do the work to make it a rule. He would like to make it a rule, but he would recognize that it needs some work. Some of the language used is not really appropriate for a rule. He does not feel it should be adopted as a rule today. He believes it's better for everyone if they have a rule that is based on good science and gives everybody a chance to talk about it in open forum. The problem with the policy is that does not happen. It happens within the company, DEQ and the offices of the license holder or permittee. Other affected landowners find out after it's too late. He would remand it to the DEQ and have it put in rule form. He would vote against the motion. Mr. Morris agrees with Mr. Boal for everyone's protection, he feels that Appendix H should be a policy.

Chairman Gordon asked for further comments from the Council. Hearing none, Chairman Gordon did a roll call vote. Mr. Moore voted yes, Mr. Brady voted no, Ms. Flitner voted no, Ms. Hutchinson voted yes, Mr. Boal voted no, Mr. Morris voted no and Chairman Gordon voted yes.

The motion failed for Appendix H to be removed from the rule package.

Chairman Gordon asked for a motion pertaining to the default values.

Mr. Boal made a motion to have Appendix H, Section 20 be remanded to the DEQ to rewrite this policy in rule form and that, at a minimum, deals with protection of irrigation uses and sets a default standard with regard to SAR and EC. He would ask that the rule be shared with the Advisory board and that the Council receive their input. He asked that a time line of 90 days be implemented for a status report so that the Council does not lose track of it. Ms. Flitner seconded the motion.

Ms. Hutchinson suggested changing the 90 day time period to 120 days for the DEQ to submit a Status Report back to the EQC. Ms. Hutchinson asked Mr. Boal if he wanted a Status Report in 90 days or after the Advisory Board meets. Mr. Boal stated that after the Advisory Board meeting would be O.K. Therefore, they should receive a status report within 120 days. This was accepted as a friendly amendment to the motion. She also suggested to the DEQ that the historic discharge issues be buttoned up tight also.

Mr. Moore made a motion to amend the existing motion that while they are waiting for rulemaking, the policy be amended to reflect DEQ's recommendations for the SAR value default value of 10 and that the EC limits be based on the USDA Agricultural Research Service National Salinity Laboratory Publication. Mr. Morris seconded the motion.

Mr. Moore explained that he is concerned and feels very strongly that DEQ is correct in their interpretation that 10 SAR should be set as the maximum default and that they should be using the USDA ARS National Salinity Lab for a data, rather than the Bridger Data for the default values. Ms. Hutchinson asked, "what if there is further evidence to dispute that SAR limit and the Advisory Board comes back and decides it should be a 16 SAR limit?" Has the Council shut the door on changes to those numbers in the rulemaking. Mr. Moore stated that when it comes back as a proposed rule, if after additional research and study and testimony, either the DEQ will say it's wrong and should be 16 or we were wrong and it should be 5. That's part of the rulemaking process they would have to consider.

Chairman Gordon asked John Wagner and John Corra how the DEQ are enforcing the Ag Use Policy now and what SAR limit will it take back to the Advisory Board. Mr. Corra stated that the DEQ today are writing discharge permits based on the 10 SAR limit, not the Advisory Boards recommendation of 16 SAR.

Mr. Corra commented on the 10 versus the 16. His understanding on the motion is that they would go through the rulemaking process with the Advisory Board with the time limit and get back to the EQC. He also clarified that there were 3 things the EQC wanted emphasis on. Those 3 things would be clarifying historical definitions, clarifying irrigation and clarifying the default limits.

Chairman Gordon asked Mr. Boal if he had a problem amending the motion so that the remanded document goes back with 10 SAR as a default value. Mr. Boal's concern is that he feels the

Council should not be approving or disapproving policies.

Chairman Gordon took a roll call vote. Mr. Morris voted yes, Ms. Hutchinson voted no, Mr. Brady voted yes, Mr. Moore voted yes, Ms. Flitner voted no, Mr. Boal voted no and Chairman Gordon voted yes. The motion carried.

Chairman Gordon asked for a roll call vote on Mr. Boal's motion to have Appendix H, Section 20 be remanded to the DEQ to rewrite the policy in rule form and that at a minimum, deals with protection of irrigation uses and sets a default standard with regard to SAR and EC. Mr. Boal voted yes, Ms. Flitner voted yes, Mr. Moore voted yes, Mr. Brady voted yes, Ms. Hutchinson voted yes, Mr. Morris voted yes and Chairman Gordon voted yes. The motion carried.

Chairman Gordon asked for further discussion or comments. Mr. DiRienzo from DEQ stated that there was a serious typo. On page B11, it deals with sites specific criteria for Powder River, below Salt Creek, the last paragraph. There was a sentence that was added in by some typographic error that deals with chloride values. The second sentence needs to be deleted. It should read, "Aquatic life criteria for chloride shall be 980 milligrams per liter". Mr. Moore moved to amend the rule on page B11 and delete the sentence that says, "The Aquatic life criteria for chloride shall be 1600 milligrams per liter". Ms. Hutchinson seconded the motion. Chairman Gordon called for a vote. The motion passed unanimously.

Mr. Moore explained to Chairman Gordon that he is a little uncomfortable with the reclassification of the waters on the recreation issue without going through an analysis.

Chairman Gordon asked for a roll call vote on the motion to approve Chapter 1, Surface Water Standards as amended. Mr. Morris voted yes, Ms. Hutchinson voted yes, Mr. Brady voted yes, Mr. Moore voted yes, Ms. Flitner voted yes, Mr. Boal voted yes. The motion carried.

The Council then reviewed the Statement of Principal Reasons. Mr. Moore stated that page 6, Section 20, the modified language for a new Agricultural Use Protection Policy is already indicated in the Statement of Principal Reasons. Mr. Moore made a motion for the following changes to the Statement of Principal Reasons; delete the reference to Appendix H on page 14, line 4 through Page 15, line 14, on page 2 delete, bullet no. 5, change bullet no. 6 to bullet no. 5. Chairman Gordon asked for a vote on the motion. The motion carried.

Lunch Break

3. Consent Agenda:

Chairman Gordon reconvened the meeting and moved to the consent agenda. Items 4 and 6 from the consent agenda were removed for discussion. Mr. Moore moved to approve the consent agenda as the entire Council considered and voted on each item separately. Ms. Flitner seconded the motion. Chairman Gordon called for a vote. The motion carried for approval of the consent agenda.

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4. Bond Forfeitures:

Raven Quarries, LLC, Mining Permit 683s, Docket No. 06-4501

Chairman Gordon asked if anyone from Raven Quarries was present at the meeting. No one was present. Mr. Burbridge, attorney for the DEQ, reviewed the Raven Quarries case.

Chairman Gordon asked the Council if they had any questions. Mr. Moore moved to approve the Order of Bond Forfeiture. Ms. Flitner seconded the motion. Chairman Gordon called for a vote. The motion carried.

Countryside Construction, Inc., Docket No. 06-4502

Chairman Gordon asked Mr. Burbridge to review the Countryside Construction case. Mr. Boal made a motion to approve the Order of Bond Forfeiture in the Countryside Construction, Inc. case. Mr. Moore seconded the motion. Chairman Gordon called for a vote. The motion carried.

Chairman Gordon and Senator John Schiffer presented Ms. Terri Lorenzon with her 30 Year Service State Employee Recognition.

5. Old Business

Chapter 2, Appendix H, Citizen Petition, Docket No. 05-3102

Chairman Gordon opened the floor for any comments in reference to Chapter 2, Citizen Petition. Mr. Moore moved to have the Council approve Appendix H and I as submitted by the petitioner on January 17, 2007, Exhibits 31 and 32 of that submission. Mr. Brady seconded the motion. Chairman Gordon asked for discussion. Ms. Hutchinson proceeded with an amendment to Appendix I by removing the total changes to the numeric standards so that they reflect the current standards. She indicated that chlorides would be 2000 milligrams per liter, sulfates would be 3000 milligrams per liter, total dissolved solids would be 5000 milligrams per liter and no change to TH. It would also eliminate the barium standard. Mr. Moore seconded the motion. Chairman Gordon asked for discussion on those items. Mr. Moore gave his reasoning in support of his motion was that the understanding that the Council will get better information to base their judgment on. Chairman Gordon asked for a vote on the motion to the amendment to the numeric standards. The motion carried.

Ms. Hutchinson commented that she has concerns with (a)(iii). Regardless of the punctuation, the paragraph says that the produced water shall not cause pollution. She feels that it's an impossibility to pass the rule as written right now. Ms. Hutchinson made a motion to eliminate (a)(iii). Mr. Moore asked if that included the text (a)(iii) that's underneath (iii), sub-paragraphs (A)(B)(C)(D). Ms. Hutchinson agreed. Mr. Moore seconded the motion. Chairman Gordon asked for discussion.

roll call vote. Mr. Brady voted yes, Mr. Moore voted yes, Ms. Hutchinson voted yes, Ms. Flitner voted no, Mr. Morris voted no, Mr. Boal voted no and Chairman Gordon voted yes. The motion carried.

Ms. Hutchinson made a motion to delete the word "credible" in paragraph A and replace it with "representative and valid". The substitute wording was suggested by DEQ at the meeting. Mr. Moore seconded the motion. Chairman Gordon asked for discussion on the motion. Chairman Gordon called for a roll call vote. Mr. Morris voted yes, Ms. Hutchinson voted yes, Mr. Brady voted yes, Mr. Moore voted yes, Ms. Flitner voted no and Mrs. Boal voted no. The motion carried.

Council Break

Chairman Gordon asked for further amendments. Hearing none, Chairman Gordon asked for discussion of the motion to approve the rule package as amended.

Ms. Flitner stated that the fundamental issues are about the relationship between quality and quantity and the gap some see in the regulatory framework. How does the Council deal with quantity when it affects quality?

Chairman Gordon asked for a roll call vote. Mr. Boal voted no, Ms. Flitner voted no, Mr. Moore voted yes, Mr. Brady voted yes, Ms. Hutchinson voted no, Mr. Morris voted yes and Chairman Gordon voted yes. The motion carried.

Council Break

Chairman Gordon moved to the Statement of Principal Reasons for Chapter 2, Appendix H and I. Ms. Hutchinson made a recommendation to have Ms. Hill or a staff member draft a new Statement of Reasons and schedule a conference call to approve it when completed. Ms. Hill declined. The Council agreed.

6. Election of Officers

Ms. Hutchinson made a motion to postpone the election of officers until the next Council meeting. Ms. Flitner seconded the motion.

Mr. Moore commented that the 3 new Council members at the next Council meeting may or may not have knowledge of the capabilities and the proficiencies of the people who are on the Council. He felt that the current body was capable of electing the new officers at that time. Chairman Gordon agreed with Mr. Moore.

Chairman Gordon asked Mr. Brady to do a nomination for the election. Mr. Brady nominated Mr. Moore as the Chairman of the Council, Ms. Flitner as the Vice-Chairman and Mr. Boal as the Secretary. Chairman Gordon asked for any more nominations. Hearing none, a vote was made. The vote was unanimous with Mr. Moore abstaining. The motion carried.

Chairman Gordon passed the gavel to Mr. Moore as the new Chairman. Chairman Moore and Ms. Flitner thanked Mr. Gordon for his incredible leadership for the past two years. He's done a great service to Wyoming and it's been a pleasure to work with him.

Chairman Moore, Mr. Morris, Ms Flitner, and Mr. Boal expressed that it's been an honor and privilege to work with the three Council members going off the Council. They brought a lot to the table and they've done a tremendous job for the State of Wyoming. They will be missed.

Ms. Hutchinson stated to all the Council members that she has not always agreed with them, but it's been an experience for her. If anyone has the opportunity to sit on the Council, she feels they should take it. Mr. Gordon agreed with Ms. Hutchinson. Mr. Brady thanked everyone for the opportunity to serve with the Council.

7. Planning Session for 2006

Chairman Moore asked the Council if they would like to begin the Planning Session or postpone it to the next Council meeting. It was also suggested to discuss it on a conference call. Ms. Hutchinson suggested scheduling a conference call before the end of the month to approve the Statement of Reasons for Chapter 2, Appendix H and I. The Council scheduled the conference call for February 27, 2007 at 8:00 A.M. The standing monthly Council conference call for March 1, 2007 was cancelled.

Chairman Moore adjourned the meeting.

RESPECTFULLY SUBMITTED

Environmental Quality Council



**Richard C. Moore, P.E.
Secretary**



**Mark Gordon
Chairman**

7/6/07
Date