

FILED

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL MAY 03 2006
OF THE STATE OF WYOMING**

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL)
OF WILLIAM P. MAYCOCK)
FROM WYPDES PERMIT NO. WY0053899)

Docket No. 06-3810

PETITION

William P. Maycock petitions the Environmental Quality Council of the State of Wyoming as follows:

1. Name and Address of Protestant and Protestant's Attorney. The name and address of the Protestant is William P. Maycock, P. O. Box 836, Gillette, WY 82716-0836. The name and address of the Protestant's attorney is Tom C. Toner, Yonkee & Toner, LLP, P. O. Box 6288, Sheridan, WY 82801.

2. Action Upon Which Hearing Is Requested. This is an appeal from the issuance of WYPDES Permit No. WY0053899 by the Administrator of the Water Quality Division of the Department of Environmental Quality to Devon Energy Production Company, LP.

3. Statement of Facts.

a. William P. Maycock ("Maycock") is the owner of a ranch in Campbell County, Wyoming.

b. On March 10, 2006, the Administrator of the Water Quality Division of the Department of Environmental Quality issued WYPDES Permit No. WY0053899 to Devon Energy Production Company, L.P. (the "Permit")

c. This permit authorizes Devon to discharge water produced from wells located adjacent to and up gradient from Mr. Maycock's ranch into on-channel reservoirs located on what the permit describes as unnamed, ephemeral tributaries of South Prong, Barber Creek and the South Prong of Barber Creek which the permit identifies as a tributary of the Powder River.

d. The outfalls and on-channel reservoirs are located up drainage from the Maycock Ranch, and any water discharged from the on-channel reservoirs will be discharged onto the Maycock Ranch.

e. The water that the permit allows Devon to discharge will cross the Maycock ranch for several miles.

f. The water will pass through the bottom lands on the Maycock ranch where there are large, flat meadow areas with no stream bed, banks or defined channel of any kind. These areas serve as important grazing pastures for Mr. Maycock's cattle to graze dry land grasses each year.

g. The soil on Mr. Maycock's ranch where Devon proposes to discharge water is highly erodible.

h. There are no perennial stream flows in the Barber Creek drainage on Mr. Maycock's ranch.

i. Water uses in existence on and after November 28, 1975 and the level of water quality necessary to protect those uses is not maintained and protected by the Permit in violation of Ch. 1, §8 of the Water Quality Rules and Regulations of the DEQ.

j. The Permit does not prevent the presence of substances attributable to or influenced by the activities of man that will settle to form sludge, bank or bottom deposits in quantities which could result in significant aesthetic degradation, significant degradation of habitat for aquatic life or adversely affect agricultural use, plant life or wildlife in violation of Ch. 1, § 15 of the Water Quality Rules and Regulations of the DEQ.

k. The Permit does not prevent the presence of floating and suspended solids attributable to or influenced by the activities of man in quantities which could result in significant aesthetic degradation, significant degradation of habitat for aquatic life, or adversely affect agricultural water use, plant life, or wildlife in violation of Ch. 1, § 16 of the Water Quality Rules and Regulations of the DEQ.

l. The Permit does not prevent the waters from containing substances attributable to or influenced by the activities of man that produce taste, odor and color or that would visibly alter the natural color of the water in violation of Ch. 1, § 17 of the Water Quality Rules and Regulations of the DEQ.

m. The Permit allows degradation of Wyoming surface waters to such an extent as to cause a measurable decrease in crop or livestock production in violation of Ch. 1, § 20 of the Water Quality Rules and Regulations of the DEQ.

n. The Permit fails to assure compliance with the turbidity requirements of Ch. 1, § 23 of the Water Quality Rules and Regulations of the DEQ.

o. The Permit fails to establish conditions to provide for and assure compliance with the Clean Water Act, the Wyoming Environmental Quality Act, and the Wyoming Water Quality Rules and Regulations prior to the final administrative disposition of the permit in violation of Ch. 2, §5(c)(ii) of the Water Quality Rules and Regulations of the DEQ.

p. The Permit fails to require that the discharge ensures compliance with the

applicable water quality requirements of all affected states in violation of Ch. 2, §9(a)(v).

q. The conditions of the Permit do not provide compliance with applicable requirements of Wyo. Stat. §35-11-302 and the Water Quality Rules and Regulations of the DEQ in violation of Ch. 2, §9(a)(vi) of the Water Quality Rules and Regulations of the DEQ.

r. The Permit fails to include the conditions and limitations that are required in all permits by Ch. 2, Appendix H paragraphs (b)(i)(ii)(v)(vii) and (ix) of the Water Quality Rules and Regulations of the DEQ.

s. The Permit fails to require the permittee to take all reasonable measures to prevent downstream erosion that would be attributable to the discharge of produced water as required by Ch. 2, Appendix H paragraph (d)(iv) of the Water Quality Rules and Regulations of the DEQ. The permit requires Devon to design and implement WDEQ approved erosion control measures prior to any discharge from the reservoirs, except in the event of a 2 year/24 hour storm event or greater. There are no criteria established for the Permit's "WDEQ-approved erosion control measures." By failing to specify the criteria which must be met by these control measures, the affected landowners including Mr. Maycock are denied any opportunity to review or comment on those measures, and no mechanism is established for notifying the public or affected landowners of the DEQ's approval. The DEQ has effectively stripped this Council of its ability to review the DEQ's decision on a measure that is of critical importance in protecting water quality.

t. The DEQ has permitted Devon to discharge water from reservoirs even though letters accompanying Devon's application state that the water management plan Devon developed for this area proposes to contain the produced water within reservoirs "and not allow water from the reservoirs to run down the South Prong of Barber Creek." In addition, Devon entered into a Surface and Damage Agreement with Mr. Maycock dated June 20, 2003 and that agreement provides that no produced water from lands not owned by Mr. Maycock shall be stored or disposed of on Mr. Maycock's land without his express written consent. Mr. Maycock has not consented to Devon disposing of water produced from the wells covered by the Permit on his property.

u. The Statement of Basis for the permit says that in the judgment of the Water Quality Division of the Department of Environmental Quality, the EPA Effluent Guidelines and Standards for Oil and Gas Extraction Point Source Category (Part 435, Subpart E) is appropriately applied to coal bed methane gas production. 40 C.F.R. Part 435 Subpart E requires that the permittee document agricultural and wildlife uses of produced water and directs that documentation be provided that produced water will be used for agriculture or wildlife during periods of discharge. The Permit does not require that the produced water be used for agriculture or wildlife during periods of discharge in violation of 40 C.F.R. Part 435 Subpart E. The Permit does not require that the produced water have use in agriculture or wildlife propagation and actually be put to such use during periods of discharge and Devon has not documented that the produced water will actually be put to use during periods of discharge in violation of Ch. 2, Appendix H paragraph (a)(i) of the

Water Quality Rules and Regulations of the DEQ.

v. The Permit's effluent limits will not protect plant life from adverse effects of the discharge, and water with the quality allowed by the Permit will cause a measurable decrease in crop and livestock production.

w. At the Permit's effluent limit of 5000 ppm of total dissolved solids, the 1.24 million gallons daily discharge of water will contain tons of salt which can be deposited on the Maycock ranch and will adversely affect agricultural use and plant life.

x. Livestock graze on the Maycock ranch along the area where Devon will discharge. The Permit's effluent limits will not protect against adverse effects to stock watering on the Maycock ranch.

y. Devon has stated in letters that accompany its application that representative water quality for the Wall coal seam indicates the concentrations of dissolved iron exceed the standard effluent limits. The Statement of Basis for the Permit states that the discharge shall not cause visible deposits of iron on the bottom or the shoreline of the receiving water, yet the permit itself does not contain this restriction on iron deposits, even though in a letter dated December 1, 2000 to the DEQ from the United States Environmental Protection Agency Region 8, ("EPA"), the EPA said, "Because all waters in Wyoming, including Class IV waters, are to be of sufficient quality to support agricultural uses and are to be free of bottom deposits, each permit shall be sufficiently stringent to allow for irrigation and to protect against bottom deposits of constituents such as iron, which tend to be present in discharges from CBM operations."

4. Request for Hearing. William P. Maycock requests a hearing before the Environmental Quality Council and requests that the Council reverse the decision to grant the Permit and grant the Petitioner such relief as he is entitled to by law or regulation.

Dated this 1st day of May, 2006.

Yonkee & Toner, LLP

By: Tom C Toner

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Certificate of Service

I certify that on the 12th day of May, 2006, I served a true and correct copy of the foregoing by depositing the same in the U.S. Certified Mail, return receipt requested, postage prepaid and addressed to:

Devon Energy Production Company, LP
20 North Broadway
Oklahoma City, OK 73102-8260;

Director, Department of Environmental Quality
122 West 25th Street
Herschler Building, Room 174
Cheyenne, WY 82002



Tom C. Toner