

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

FILED

NOV 25 2009

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE APPEAL OF)
JOHN D. KOLTISKA, AC RANCH, INC.,)
a Wyoming Corporation, PRAIRIE DOG)
RANCH, INC. a Wyoming Statutory Close)
Corporation, and PRAIRIE DOG WATER)
SUPPLY COMPANY FROM WYPDES)
PERMIT NO. WY0054364)

Docket No. 09-3805

**ORDER DENYING SUMMARY JUDGMENT
AND DENYING MOTION TO STRIKE EXPERT TESTIMONY**

This matter having come before the Environmental Quality Council on the Motion of Pennaco Energy, Inc. for Summary Judgment and to Strike Expert Testimony, and a quorum of the Council having reviewed the files, having heard the arguments of counsel for Pennaco and counsel for the Protestants (DEQ's attorneys were present but took no position on the motion) at a hearing November 4, 2009, and the Council being advised in the matter, it hereby FINDS and ORDERS:

FINDINGS

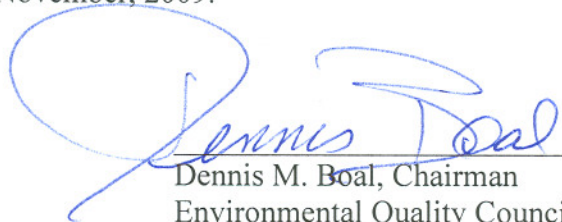
1. There exist genuine issues as to material facts regarding the appropriateness of the scientific method relied upon by DEQ to issue permit WY0054364.
2. There exist genuine issues of material fact regarding whether water discharged under WY0054364 will not cause a measurable decrease in crop production.
3. Pennaco's Motion to Strike Expert Testimony does not establish that the opinions offered by Protestants' experts, Dr. George Vance and Jim O'Neil, are not relevant to these

issues and are not “of a type that is ‘commonly relied upon by reasonably prudent men in the conduct of their serious affairs.’” *Griffin v. State*, 2002 WY 82, ¶11, 47 P.3d 194.

ORDER

For the reasons stated above, Pennaco’s Motion for Summary Judgment is DENIED; and Pennaco’s Motion to Strike Expert Testimony is DENIED without prejudice.

Dated this 25th day of November, 2009.



Dennis M. Boal, Chairman
Environmental Quality Council
122 West 25th Street
Herschler Bldg., Rm. 1714
Cheyenne, WY 82002
(307)777-7170

APPROVED AS TO FORM:



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.



Mike Barrash, Bar No. 5-2310
Luke Esch, Bar No. 6-4155
Wyoming Attorney General’s Office
123 Capitol Building
Cheyenne, WY 82002
ATTORNEYS FOR THE WYOMING
DEPARTMENT OF ENVIRONMENTAL
QUALITY



Kate M. Fox, Bar No. 5-2646
J. Mark Stewart, Bar No. 6-4121
DAVIS & CANNON, LLP
422 W. 26th Street
P. O. Box 43
Cheyenne, WY 82003
ATTORNEYS FOR PETITIONERS

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CERTIFICATE OF SERVICE

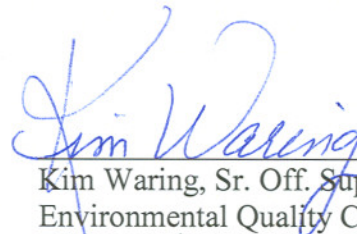
I, Kim Waring, certify that at Cheyenne, Wyoming, on the 25th day of November, 2009, I served a copy of the foregoing **ORDER DENYING SUMMARY JUDGMENT AND DENYING MOTION TO STRIKE EXPERT TESTIMONY** by electronic mail to the following:

John Corra
Director, DEQ
jcorra@wyo.gov
(307)777-7192

Mike Barrash
Luke Esch
Office of Attorney General
mbarra@state.wy.us
lesch@state.wy.us
(307)777-7819

Kate Fox
Mark Stewart
Davis and Cannon, LLP
mark@davisandcannonchey.com
kate@davisandcannonchey.com
(307)634-3210

Mark Ruppert
Trey Overdyke
Holland & Hart, LLP
mruppert@hollandhart.com
(307)778-4200



Kim Waring, Sr. Off. Support Spec.
Environmental Quality Council
122 W. 25th, Rm. 1714
Herschler Bldg.
Cheyenne, WY 82002
Phone: 307-777-7170
FAX: 307-777-6134