

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

APR 12 2007

In the Matter of the Appeal )  
of William P. Maycock from )  
WYPDES Permit No. WY0050857 )

Docket No. 06-3818

Terri A. Lorenzon, Director  
Environmental Quality Council

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**WILLIAMS' RESPONSE TO MOTION FOR EXPEDITED HEARING**

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**I. There is no Urgency for this Appeal and no "Great Risk" to Mr. Maycock's Property.**

Mr. Maycock wants this Council to expedite the hearing of WY0050857 (the South Prong permit) by trying to portray some "great risk" and artificial emergency not at all matched by the actual facts. He wants the Council to believe that an unrelated, isolated pipeline break near Barber Creek has anything to do with a separate tributary and separate permit on South Prong. He conveniently omits the critical fact that Williams has not discharged down the South Prong drainage – and in fact has been ordered by the DEQ not to discharge down this drainage. As if these "apples and oranges" differences were not enough to conclude that no "great risk" exists, he then exaggerates the small spill in Barber Creek with misleading claims about the amount of water from the spill, channel erosion, and overflow onto bottomlands.

With all due respect to Mr. Maycock's "what if" scenario about an isolated spill in another drainage, there is no basis, and more importantly, no need for an expedited hearing on the South Prong permit. There is no discharge occurring under the permit, and any discharge down South Prong under the permit is already prohibited by DEQ.

**II. The Facts of South Prong.**

At the EQC hearing on the Barber Creek permit, Mr. Olson for Williams explained that Williams had not discharged water down South Prong, although its permit allowed direct discharge, until Williams could know of downstream conditions (Tr. at 489). Moreover, on

October 26, 2006, while recognizing that Williams had not discharged produced water down South Prong, DEQ prohibited Williams from discharging water down South Prong to protect downstream crop and livestock production. DEQ further stated it would take corrective action if Williams failed to maintain containment (Letter from Bill DiRienzo attached as Ex. A to Olson Affid.). The South Prong permit is only used to discharge to containment reservoirs; consequently, Williams has never discharged water down South Prong since the issuance of its South Prong permit, and Williams does not intend to discharge water down South Prong until it modifies its permit, which would require it to go through public notice and comment (Olson Affid. ¶¶2, 3).

Williams is currently evaluating its operations in the areas near Mr. Maycock's ranch and the need for certain permits including the South Prong permit (Olson Affid. ¶4 ). In any event, Williams will not, and cannot, discharge water into the South Prong drainage under the South Prong permit as appealed. This reality alone should convince the Council there is no "great risk."

### **III. The Facts of the Barber Creek Spill.**

In an effort to justify its request for expedited hearing, the Motion attempts to link the South Prong permit to an unrelated pipeline break near Barber Creek. And, the Motion plays loose and fast with the facts in an attempt to make it appear that the spill and Williams' reconstructed channel are causing harm to Mr. Maycock's property. For the Council to see through such claims, Williams has attached affidavits to this Response rather than simply have its lawyers characterize the spill and flow (Affidavits of Mr. Joe Olson and Mr. Hugh Lowham attached as Exhibits 1 and 2).

The spill was the result of a pipeline/valve break likely caused by defective equipment and freeze/thaw conditions. The break in the pipeline occurred on Mitch Maycock's property in the vicinity of Barber Creek and upstream of Mr. Maycock's property. The spill was unintentional, as

the pipeline is intended to convey produced water to the point of storage. The pipeline spill first occurred sometime on Friday, March 2, 2007, and the pipeline was shut off about 8:00 a.m. on Monday, March 5, 2007, as soon as the problem and spill were noticed. Williams immediately contacted the affected landowners including Mr. Maycock (Olson Affid. ¶5). The spill from the pipeline over the weekend produced about 7,500 barrels of produced water, some of which could have flowed the 3.4 mile distance from the break into the Barber Creek reconstructed channel on Mr. Maycock's property. The amount of flow associated with the pipeline break was about 0.167 cubic feet per second (cfs) (Olson Affid. ¶5). Produced water from the pipeline break would have only been a "very small" portion of the total flow in Barber Creek (Lowham Affid. ¶4e).

Williams retained an expert hydrologist, Mr. Lowham, to reconstruct the channel to accommodate flows of water, either natural runoff or natural runoff mixed with produced water, of 20 cfs (Lowham Affid. ¶4b), over 100 times the volume of the recent spill. As the Council is aware, Mr. Maycock complained that the channel design would cause Mr. Maycock to forfeit the natural flow irrigation events (Tr. at 283). As a result, Mr. Lowham engineered the reconstructed channels on Mr. Maycock's property so that natural runoffs *would* spread on Mr. Maycock's bottomlands, ensuring that Mr. Maycock does not forfeit his historic flood irrigation of his bottomlands. (Lowham Affid. ¶4f).

As can be seen by Mr. Maycock's photos (although they are misleadingly characterized, see Lowham Affid. ¶¶4e, 4g, 5a), these measures worked exactly as intended, providing natural runoff water to Mr. Maycock's bottomlands. Williams blocked the culverts and installed dams in the channel, in order to spread the snow melt runoff found in the channel (Lowham Affid. ¶4f). One would think that natural runoff spreading onto and irrigating Mr. Maycock's bottomlands would be beneficial to Mr. Maycock. Indeed, the Council itself asked about whether the

reconstructed channel would interfere with Mr. Maycock's ability to enjoy historic natural flows in the bottomlands (Tr. at 459). However, the Maycock Motion turns the facts on their head and suggests that less than 0.2 cfs from a spill caused the 20 cfs channel to overflow undiluted effluent onto Mr. Maycock's bottomlands. The 0.2 cfs trickle from the spill, 3.4 miles from the reconstructed channel, did not cause the water flow onto bottomlands, and the water in Maycock photos, Exhibits 1 and 2, is not undiluted produced water (Lowham Affid. ¶4e), as suggested in Maycock's Motion. As Mr. Lowham explains, the snow melt run-off, mixed with only a very small portion of spilled water, backed up behind the dams and spread onto the bottomlands, as intended (Lowham Affid. ¶¶4e, 4f, 4g).

Mr. Maycock's Motion further presents a misleading picture of erosion both in and near the reconstructed channel (Lowham Affid. ¶¶4g, 4h). Mr. Lowham engineered the channel to minimize erosion. Mr. Lowham anticipated some minor erosion until vegetation was established (Lowham Affid. ¶4h), although Mr. Lowham is quite pleased with how the channel has performed and remained stable this year given the heavy snows and significant natural runoff reaching the channel (Lowham Affid. ¶4a). Because erosion was anticipated, Mr. Lowham explained to the Council that Williams had put in place a maintenance plan to maintain the channel, at least until vegetation could be established (Tr. at 650 and Lowham Affid. ¶5).

However, in a further effort to manufacture a claim of "great risk" and urgency, the Motion again twists the facts to try to pin the blame on the small spill three miles upstream as the culprit causing the erosion seen in Maycock's photographs. For example, Exhibit 5 to the Motion shows the channel remediation work completed by Williams with pre-existing headcuts and erosion features next to the channel work, but the Motion casually claims "that the water just flowed around the structure and cut a channel that is eroding." That is patently false. The Motion fails to

admit that those headcuts are from distributary and tributary channels that were in place *before* Williams did any work to the channel, and a photo taken by Mr. Lowham on September 15, 2006 (Lowham Ex. A) confirms that these headcuts and erosion predated the reconstructed channel (Lowham Affid. ¶5b). The 0.2 cfs (at most) spill has not caused the erosion depicted in the photographs.

Thus, there is simply no connection between this relatively small spill and any erosion caused by natural runoffs or spreading water on bottomlands, let alone any connection between the spill and the South Prong permit appeal. Exaggerated claims notwithstanding about the impact of Williams' 0.2 cfs spill, no urgency exists to have the Council expedite a hearing – the spill has been overly dramatized and, in any event, has nothing to do with the challenged South Prong permit.

#### **IV. Conclusion.**

Mr. Maycock's own Motion at Paragraph 10 reveals its weakness: "It is critical that this matter be promptly set for hearing so that Williams cannot *do any more damage* to the Maycock property by *discharging* water into the *South Prong* of Barber Creek." As shown above, this spill has nothing to do with either South Prong or with a permitted discharge, which Williams cannot do anyway down South Prong. Moreover, the small spill that may have reached the Barber Creek reconstructed channel over 3 miles away has nothing to do with the water spreading on bottomlands or channel erosion there. Rhetoric and argument in the Motion aside, there is no factual basis linking any aspect of this spill to the Council's consideration of the South Prong permit, and there is no point in expediting a hearing on the basis of this unrelated and sensationalized incident.

Respectfully submitted April 12, 2007.

A handwritten signature in black ink, appearing to read "Jack D. Palma, II", written over a horizontal line.

Jack D. Palma, II, P.C.

Mark R. Ruppert

Matt J. Micheli

Holland & Hart LLP

P. O. Box 1347

Cheyenne, WY 82003-1347

Telephone: (307) 778-4218

Facsimile: (307) 778-8175

ATTORNEYS FOR WILLIAMS  
PRODUCTION RMT CO.

## CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2007, I served the foregoing Response to

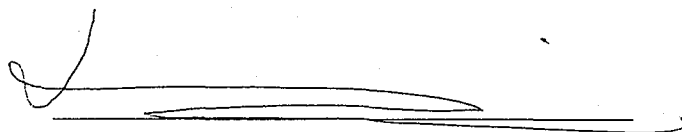
Motion for Expedited Hearing to the following by:

Mike Barrash  
Sr. Assistant Attorneys General  
Wyoming Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002  
(307) 777-3542 - facsimile

- U.S. Mail, postage prepaid
- UPS – overnight delivery
- Hand Delivery
- Fax
- E-mail (mbarra@state.wy.us)

Tom C. Toner  
Attorney At Law  
319 W. Dow Street  
P.O. Box 6288  
Sheridan, WY 82801-1688  
(307) 672-6250 - facsimile

- U.S. Mail, postage prepaid
- UPS – overnight delivery
- Fax
- E-mail (ttoner@yonkeetoner.com)



# EXHIBIT 1



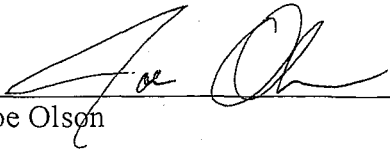


4. Williams applied to modify effluent limits and monitoring requirements of the South Prong permit in April 2006. In addition, Williams is currently evaluating its water management operations in the areas near Mr. Maycock's ranch and specifically its operations under permit WY0058057.

5. Sometime on Friday, March 2, 2007, a valve on Williams' water pipeline broke and water from the pipeline began to escape the line and flow into Barber Creek upstream of Mr. Maycock's ranch on the Mitch Maycock property. The pipeline break occurred approximately 3.4 miles from the reconstructed channel. The pipeline/valve break was likely caused by defective equipment and freeze/thaw conditions. The spill was unintentional. The water was to be maintained in the pipeline and discharged at the outfall into the reservoir on Joe Maycock's property. The pipeline rupture occurred sometime on Friday, March 2, 2007, and the pipeline was shut off about 8:00 in the morning on Monday, March 5, 2007, as soon as the problem and spill were noticed. Williams immediately contacted the affected landowners including Mr. Maycock. The spill from the pipeline over the weekend produced about 7,500 barrels of water, some of which made it into the Barber Creek. The amount of flow associated with the pipeline break at the point of the break was approximately 0.167 cubic feet per second (cfs).

6. The water in the pipeline that spilled into Barber Creek was produced upstream from Mr. Maycock on the main stem of Barber Creek. This water production is not related to water produced under permit WY0050857 and is several miles from that development. The water that escaped the pipeline did not flow in or around South Prong Barber Creek.

Further Affiant Sayeth Naught.

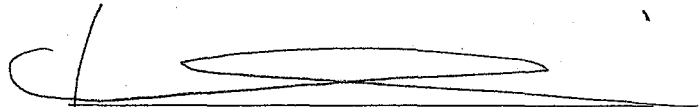
  
\_\_\_\_\_  
Joe Olson

STATE OF WYOMING                    )  
  )ss.  
COUNTY OF ~~CAMPBELL~~            )  
  Laramie

I do hereby certify that on this 11<sup>th</sup> day of April, 2007, Joe Olson personally appeared before me, who, being first duly sworn by me, declared that he read and signed the foregoing Affidavit and that the statements therein contained are true.

In witness whereof, I have hereunto set my hand and seal this 11<sup>th</sup> day of April, 2007.



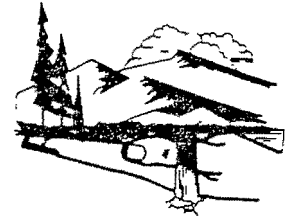
  
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NOTARY PUBLIC

Commission Expires: 1-23-08

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# Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

October 26, 2006

Mr. Joe Olson  
Williams Production RMT Company  
300 North Works Avenue  
Gillette, WY 82716

RE: Wyoming Pollutant Discharge Elimination System (WYPDES) Permit  
WY0050857, South Prong Barber Creek CBM Wells

Dear Mr. Olson:

The WYPDES Program has received two letters from Mr. Tom Toner of Yonkee & Toner, LLP, who represents Mr. William Maycock. In these letters, Mr. Toner requests that based upon information that we have today, the permit limits in WY0050857 should be modified to be protective of known irrigation uses in Barber Creek.

At some point it may be appropriate to modify the permit to reflect that irrigation is occurring and to establish different limits. We do not, however, believe that it is necessary at this time to modify this particular permit.

Although the permit as it currently stands would allow discharges into the South Prong of Barber Creek, such discharges have not yet occurred. Williams has so far been successful in containing all discharges in reservoirs and managing the water to ensure that it does not reach or impact irrigated lands. Williams must continue containment of its produced water for protection of downstream crop and livestock production. Should you fail to maintain containment, we will take corrective action.

In April, 2006, Williams applied to modify various effluent limits and monitoring requirements on the current permit. A public notice of the proposed modification was issued on August 15, 2006 but the WQD has not yet taken a final action on that proposal. Because of the circumstances

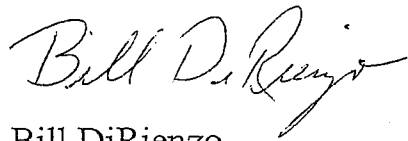


Mr. Joe Olson  
October 16, 2006  
Page 2

described above, we intend to also hold off making those modifications until such time that the permit is re-opened.

Please feel free to contact me at 307-777-7082 if you have any questions or would like to further discuss this matter.

Sincerely,



Bill DiRienzo  
WYPDES Program Manager  
Water Quality Division

WJD/rm/6-1016

Enclosures: June 6, 2006 – Toner Letter  
September 5, 2006 – Toner Letter

cc: John Wagner, DEQ/WQD  
Vicci Colgan, Attorney General's Office

## EXHIBIT 2





reconstruction of drainages and stream channels. I am familiar with ephemeral watercourses in this area and irrigation and administration from these watercourses.

3. I have been retained by Williams Production RMT to conduct a hydrologic analysis of Barber Creek drainage regarding its flow characteristics, channel capacity, and provide recommendations pertaining to the management of surface discharges of CBM water in the Barber Creek watershed.

4. As part of that work, in 2006 I designed and supervised the reconstruction of a portion of Barber Creek and South Prong channels on Mr. William Maycock's property, where the natural drainage and channel had been altered many years ago by the installation of some dikes to mitigate gullies and head cuts from moving upstream.

a. My crew and I have inspected the channel reconstruction on numerous occasions. Our inspections and observations show that the reconstructed channel is currently sound, stable, and is essentially intact, with only minimal erosion, after this first season of heavy snow-melt and significant natural run off.

b. The reconstructed channel was designed for a capacity of 20 c.f.s. in order to contain undiluted CBM produced water in the channel. The channel design allows significant snow melt and storm run-off to exceed the banks, to assure Mr. Maycock does not forfeit the benefits of that natural run-off on his bottomlands.

c. I am aware of a Williams' pipeline break which occurred on or about March 4, 2007, upstream of the reconstructed channel.

d. The streamflow was measured at 0.074 cfs on March 5, 2007, at a stream flow gauge, which is only .6 miles downstream of the pipeline break and 2.8 stream miles upstream from the start of the reconstructed channel in Barber Creek.

e. The water in Maycock photos, Exhibits 1 and 2, is not undiluted produced water. The CBM water whose source was the pipeline break would have been only a very small portion of the total flow in Barber Creek because snowmelt was also occurring.

f. My crew hydro-seeded the reconstructed channel last fall to further stabilize the reconstructed channel. As a temporary measure, until the vegetation was established during the upcoming growing season, my crew installed a total of 5 dams to minimize or restrict flow in the reconstructed channel so the seed and mulch would not wash away, and to spread snow melt runoff across bottomlands to enhance irrigation so that natural historic flood irrigation would be preserved on these bottomlands. Plywood was installed to block the culverts in the reconstructed channel to spread natural runoff and maintain historic flood irrigation of Mr. Maycock's bottomlands.

g. I have reviewed Maycock photos, Exhibits 1 and 2, and they are misleading inasmuch as they fail to depict the dams that are in place which intentionally backed up water in the reconstructed channel for the purposes described in paragraph 4.f above.

h. The sediment shown in Maycock photo Exhibit 6 is upstream of one of those dams were installed to restrict the flow and capture the sediment. This

sediment will be used to repair the banks and rills which occurred, once the channel revegetation is re-established and the temporary diversion dams are removed. At that time, the minor erosion caused by water flowing around the dams will also be remediated.

5. As I testified in the EQC hearing, during significant runoff events, the channel could undergo changes, and Williams' plan has always been to do the maintenance necessary to address erosional problems and to maintain a stable channel. (See EQC. Tr. 650.)

a. I disagree that the small natural drainages intercepted by the reconstructed channel are now starting to erode up the small drainages due to the reconstructed channel as Mr. Maycock contends. Furthermore, if they do, then Williams would repair and stabilize those erosional features.

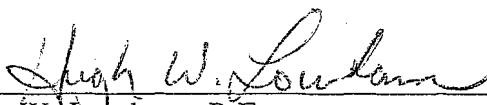
b. I have reviewed Maycock photo Exhibit 5, which he contends depicts that "... (t)he structure Williams constructed to prevent headcutting is causing water just flowing around the structure and cutting a channel that is eroding...." A photograph taken by one of my crew on September 15, 2006, (Exhibit A to my affidavit), clearly shows that these headcuts already existed before the channel reconstruction.

c. As I testified at the EQC hearing, it is still my opinion that the remedial measures, channel reconstruction, and erosion-control plans will greatly

improve the ranch operation on the Maycock Ranch by preventing existing, naturally occurring headcuts from migrating upstream, reducing overall erosion, and stabilizing the channel.

Further Affiant sayeth naught.

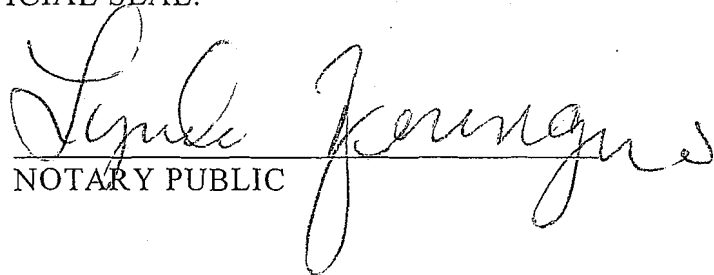
Dated this 11<sup>th</sup> day of April, 2007.

  
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Hugh W. Lowham, P.E.

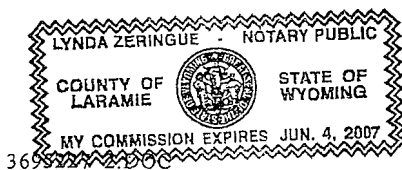
STATE OF WYOMING                    )  
  )ss.  
COUNTY OF LARAMIE            )

I hereby certify that on this 11<sup>th</sup> day of April, 2007, Hugh W. Lowham personally appeared before me, who, being first duly sworn by me, declared that he read and signed the foregoing Affidavit and that the statements therein contained are true.

WITNESS MY HAND AND OFFICIAL SEAL.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:



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