

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

FILED

AUG 11 2008

Jim Ruby, Executive Secretary
Environmental Quality Council

IN THE MATTER OF THE APPEAL)
OF CLABAUGH RANCH, INC.)
FROM WYPDES PERMIT NO. WY0049697) Docket No. 08-3802

**CLABAUGH RANCH INC'S RESPONSE TO MOTION FOR A
MORE DEFINITE STATEMENT**

Clabaugh Ranch, Inc. responds to the motion for a more definite statement filed by Lance Oil & Gas Company, Inc. as follows:

1. The rules of the Environmental Quality Council provide that the Wyoming Rules of Civil Procedure, insofar as the same may be applicable and not inconsistent with the laws of the state and the rules of the council, shall apply to matters before the council. General Rules of Practice and Procedure Chapter 1, Section 14. *Wyo. R. Civ. P. 8(a)* requires that a pleading contain only "a short and plain statement of the claim showing that the pleader is entitled to relief." Wyoming is a "notice pleading" state. All the petition has to do is give notice of nature of the claim. If there are questions about the facts supporting those claims, those facts are to be fleshed out during the discovery process. *BB v. RSR*, 2007 WY 4, ¶13, 149 P.3d 727, 732-733 (Wyo. 2007). (" . . . to the pleadings is assigned the task of general notice giving; the task of narrowing and clarifying the basic issues, ascertaining the facts relative to those issues, is the role of deposition-discovery process aided by the pretrial hearing. In other words, a pleading should give notice of what an adverse party may expect, and issues should be formulated through deposition-discovery processes and pretrial hearings.")

2. Because of the availability of the discovery process to flesh out the facts in

a contested case proceeding, motions for a more definite statement are a “disfavored motion.” *BB In Technology Co. Ltd. v. JAF, Limited Liability Corp.*, 242 F.R.D. 632, 640 (D.C. Fla. 2007); *Synagro-WWT, Inc. v. Rush Twp. Pennsylvania*, 204 F. Supp. 2d. 827, 849 (D.C. Pa. 2002); 5C Wright and Miller, *Federal Practice and Procedure* §1377, pp. 338-339 (“Furthermore as a result of the generally disfavored status of these motions, the proportion of Rule 12(e) requests granted by the district courts appears to have remained quite low.”)

3. Motions for a more definite statement under Rule 12(e) are proper only where the allegations are so vague that they cannot be responded to, and if a moving party is able to discharge its pleading obligations under the rules, then a Rule 12(e) motion based on the belief that a better affirmative pleading by the opposing party will enable it to provide a more enlightening or accurate response will be denied. 5C Wright and Miller, *Federal Practice and Procedure* §1377, pp. 340-341. In this case both the DEQ and Lance responded to the petition.

4. A motion for a more definite statement is proper only if the responsive party cannot respond in good faith to the allegations. *BB In Technology Co. Ltd.*, 242 F.R.D. at p. 640. That is clearly not the case in this proceeding.. The Department of Environmental Quality replied to each and every allegation which Lance Oil & Gas Company claims were so vague that it was impossible to respond to those allegations. The DEQ’s response was filed with this council on July 7, 2008. Are we to believe that the DEQ’s response was not filed in good faith? If the DEQ was able to respond, then why is Lance so befuddled by the allegations that it cannot respond?

In addition, Lance itself was able to file an answer to this petition, and it filed its

answer on July 25, 2008, the same date that it filed its motion for a more definite statement. Rule 12(e) states that a motion for more definite statement has to be filed before interposing a responsive pleading. Both the DEQ and Lance were able to and did interpose a responsive pleading; therefore, the motion should be denied.

Conclusion

Clabaugh Ranch, Inc. asks that this motion for a more definite statement be denied. The DEQ and Lance have answered the petition. They have each denied the allegations in the petition, As the Wyoming Supreme Court has said, if Lance really has questions about the facts relative to the issues in this case, then the proper way of addressing those concerns is through the discovery process rather than filing a "make work" motion under Rule 12(e) to delay the process.

Dated this 8th day of August, 2008.

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By: 

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Certificate of Service

I hereby certify that on the 8th day of August, 2008, I caused the foregoing to be served on the other parties by depositing a copy of the same in the United States mail, postage prepaid, at Sheridan, Wyoming, and duly addressed to:

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