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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

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

MOTION FOR SUMMARY JUDGMENT

COMES NOW Lance Oil and Gas Company, Inc. ("Lance"), by and through its attorneys, Speight, McCue & Crank, P.C., and respectfully moves the Environmental Quality Council ("EQC") to grant Lance Summary Judgment pursuant to Rule 56, Wyoming Rules of Civil Procedure.

In support of said Motion, Lance states and alleges as follows:

1. The Petitioner in this matter has no right to challenge the contested Permit before the EQC;

2. Because the Petitioner has no right to challenge the contested Permit before the EQC, the EQC has no subject matter jurisdiction over this appeal;

3. There are no contested issues of material fact in this matter, and Lance is entitled to judgment as a matter of law; and

4. For the reasons argued in the Memorandum in Support of Motion for Summary Judgment, which is filed with this Motion and incorporated herein as if fully set forth, Lance is entitled to summary judgment pursuant to Rule 56, Wyoming Rules of Civil Procedure.

WHEREFORE, Lance prays as follows:

1. That the EQC forthwith enter an Order dismissing the Petition brought in this matter; and

2. Award the parties any and all additional relief to which they are entitled.

DATED this 17th day of July, 2009.

SPEIGHT, McCUE & CRANK, P.C.

By: 

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ATTORNEYS FOR LANCE OIL AND
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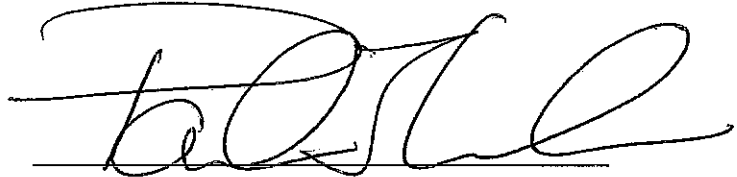
CERTIFICATE OF SERVICE

This is to certify that on the 17th day of July, 2009, a true and correct copy of the foregoing was served upon counsel as follows:

Director	<input type="checkbox"/>	U.S. Mail
Department of Environmental Quality	<input type="checkbox"/>	Federal Express
122 West 25 th Street	<input type="checkbox"/>	Fax
Herschler Building, Room 174	<input checked="" type="checkbox"/>	Hand Delivered
Cheyenne, WY 82002		

John Burbridge	<input checked="" type="checkbox"/>	U.S. Mail
Wyoming Attorney General's Office	<input type="checkbox"/>	Federal Express
123 Capitol Building	<input type="checkbox"/>	Fax
Cheyenne, WY 82002	<input type="checkbox"/>	Hand Delivered

Tom C. Toner	<input checked="" type="checkbox"/>	U.S. Mail
Yonkee & Toner, LLP	<input type="checkbox"/>	Federal Express
P.O. Box 6288	<input type="checkbox"/>	Fax
Sheridan, WY 82801	<input type="checkbox"/>	Hand Delivered

A handwritten signature in black ink, appearing to read 'b. J. Toner', written over a horizontal line.

PJC:pw

Exhibit 1

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BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
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LANCE OIL AND GAS COMPANY, INC.’S RULE 56.1 STATEMENT

The material facts as to which there is no dispute are set forth on pages 16 through 25 of the Memorandum in Support Of Lance Oil And Gas, Inc.’s (“Lance”) Motion For Summary Judgment. These facts include:

1. Undisputed facts regarding the allegations of paragraph 3(d) of Clabaugh Ranch Inc.’s (“Clabaugh”) Petition:

Clabaugh testified that he had no knowledge of how much water was being discharged into Wild Horse Creek upstream of his ranch. See, Clabaugh Deposition, Exhibit 1 of Memorandum in Support Of Lance Oil And Gas, Inc.’s (“Lance”) Motion For Summary Judgment at p. 64. Clabaugh had no idea of quantities being discharged by particular outfalls and such information was irrelevant to Clabaugh because “I don’t want their water period.” Id. Clabaugh could not provide any facts to support the proposition that any water

discharged into Wild Horse Creek actually ran across the Clabaugh Ranch. *Id* at 65. Clabaugh admitted that water evaporates and soaks into the ground. *Id.*

2. Undisputed facts regarding the allegations of paragraph 3(e) of Clabaugh's Petition:

See Clabaugh testimony referenced with regard to paragraph 3(d) *supra*.

3. Undisputed facts regarding the allegations of paragraph 3(f) of Clabaugh's Petition:

Clabaugh admitted that the **collective** effect of water flowing in Wild Horse Creek has had a limited effect on the operation of the Clabaugh Ranch. Clabaugh has lost some of his "bottomland" along Wild Horse Creek. *Id* at 13-14. Clabaugh can no longer calve along Wild Horse Creek but calves on another area of the ranch. *Id* at 14-15. When Clabaugh was asked how coalbed methane development had affected his cow-calf operation, Clabaugh testified: "**Well it probably hasn't affected** – well, it took away my calving pastures. You have quite a bit more foot rot. I've had some death loss because of the ice." *Id* at 14 (emphasis added). Clabaugh could not provide the number of cases of "foot rot" and testified he had lost one bull, two cows, and some unknown number of cows because of the ice. *Id* at 14-16.

Clabaugh estimated that on some years, he would hay what he estimated to be 300 acres of "bottom land" hay along the creek. This hay was only put up if there had been sufficient rainfall to justify the haying. Otherwise, Clabaugh would just graze this area along the creek. During drought years, Clabaugh did not cut the hay. Clabaugh admitted that the last ten years had been drought years in Campbell County. *Id* at 18-21.

4. Undisputed facts regarding the allegations of paragraph 3(g) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(g) of his petition. Clabaugh could not even relate what was provided in Ch. 1, Section 8 of the Water Quality Division Rules and Regulations of the DEQ. Clabaugh further admitted that he has filed the same petition for every appeal he has filed with regard to any upstream discharge on Wild Horse Creek. Clabaugh also admitted that prior to coalbed methane production Clabaugh used water being produced from coal seams to water his livestock. *Id* at 91-92. Clabaugh admitted that there was no noticeable decrease in livestock or crop production based on historical use of methane gas water or based on water discharge associated with coalbed methane production on Clabaugh Ranch. *Id* at 61-62. Clabaugh further admitted that there are no irrigation systems on ranch but for irrigation associated with Clabaugh's own coalbed methane production. There are no sprinkler systems, head gates, spreader dikes, etc., on Wild Horse Creek. *Id* at 33. The water uses pre and post coalbed methane production have not changed. Clabaugh has used coalbed methane water for his livestock his entire life and has never irrigated, or undertaken any efforts to irrigate, from Wild Horse Creek his entire life.

5. Undisputed facts regarding the allegations of paragraph 3(h) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(h) of his petition. Clabaugh could not even relate what was provided in Ch. 1, Section 15 of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 92-93.

6. Undisputed facts regarding the allegations of paragraph 3(i) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(i) of his petition. Clabaugh could not

even relate what was provided in Ch. 1, Section 16 of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 93-94. Clabaugh admitted he had no idea how many dissolved solids were allowed by permit or the quantity of solids flowing through or being deposited on the ranch. *Id* at 107-108.

7. Undisputed facts regarding the allegations of paragraph 3(j) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(j) of his petition. Clabaugh could not even relate what was provided in Ch. 1, Section 17 of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 94. Clabaugh has no facts as to how the taste, odor, or color of Wild Horse Creek has been affected by coalbed methane production. *Id*. Clabaugh admitted that Wild Horse Creek, when it flowed, was always muddy and silty and not of a quality that you would drink. *Id* at 40.

8. Undisputed facts regarding the allegations of paragraph 3(k) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(k) of his petition. Clabaugh could not even relate what was provided in Ch. 1, Section 20 of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 94-95.

Clabaugh testified:

Q. Tell me what facts you can tell me today that show that, by the issuance of this permit to Lance Petroleum, there has been a measurable decrease in crop or livestock production on your ranch.

A. I've had a loss of crop.

Q. From this permit?

A. From the water, period.

Q. From the water in total. Correct?

A. Yes.

Q. And what –

A. I'm not going to say it's all coming from here. No, I can't. I'm talking about water coming all the way down the creek.

Q. So collectively, all the permits issued on Wild Horse Creek you believe has caused a loss of crop?

A. Yes.

Q. And tell me what that loss of crop has been.

A. Hay –

Q. Assuming that –

A. -- grass.

Q. Go ahead.

A. Hay and grass.

Q. So assuming it would have been a good year and you could have hayed, you've lost that hay crop. Correct?

A. Yes.

Q. And when you say and grass, you believe there are different kinds of grass growing on your bottomlands now than prior to CBM production. Correct?

A. Yes.

Q. And what experts have you had study the grass on the Clabaugh Ranch that leads you to conclude there's a different type of grass and in different quantities growing on the Clabaugh Ranch?

A. I've had no experts that I can say of.

Q. So it's just your general observation. Correct?

A. Yes, sir.

Q. And you cannot tell me that that loss of hay or grass is specifically attributable to this permit that you're appealing. Correct?

A. No.

Id at 95-96.

9. Undisputed facts regarding the allegations of paragraph 3(l) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(l) of his petition. Clabaugh could not even relate what was provided in Ch. 1, Section 23 of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 96-97. Clabaugh admitted that he did not even know what "turbidity" was. As discussed *supra*, Clabaugh testified that Wild Horse Creek, when running, has always been full of silt and mud. *Id* at 40.

10. Undisputed facts regarding the allegations of paragraph 3(m) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(m) of his petition. Clabaugh could not even relate what was provided in Ch. 2, Section 5(c)(ii) of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 98.

11. Undisputed facts regarding the allegations of paragraph 3(n) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(n) of his petition. Clabaugh could not

even relate what was provided in Ch. 2, Section 9(a)(v) of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 98-99. Clabaugh admitted he did not know what an “affected state” was. *Id* at 99.

12. Undisputed facts regarding the allegations of paragraph 3(o) of Clabaugh’s Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(o) of his petition. Clabaugh could not even relate what was provided in Wyo. Stat. § 35-11-302 and the Water Quality Division Rules and Regulations of the DEQ. *Id* at 99.

13. Undisputed facts regarding the allegations of paragraph 3(p) of Clabaugh’s Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(p) of his petition. Clabaugh could not even relate what was provided in Ch. 2, Appendix H paragraphs (b)(i), (ii), (v), (vii), and (ix) of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 99-100. Clabaugh admitted that he did not have any understanding of what “Appendix H” was. *Id* at 100.

14. Undisputed facts regarding the allegations of paragraph 3(q) of Clabaugh’s Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(q) of his petition. Clabaugh could not even relate what was provided in Ch. 2, Appendix H paragraphs (d)(iv) of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 100-101. Clabaugh further admitted erosion was not a “huge problem” and he could think of only three areas on the ranch where erosion had occurred. *Id* at 102-103. Clabaugh could supply no facts to support that the erosion was specifically attributable to the Lance permit. *Id* at 103.

15. Undisputed facts regarding the allegations of paragraph 3(r) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(r) of his petition. Clabaugh could not even relate what was provided in Ch. 2, Appendix H paragraph (a)(i) of the Water Quality Division Rules and Regulations of the DEQ. *Id* at 103-104. Clabaugh admitted that his livestock and wildlife are using coalbed methane produced water in Wild Horse Creek, *Id* at 104, and have historically done so for years. *Id* at 91-92.

16. Undisputed facts regarding the allegations of paragraph 3(s) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(s) of his petition. *Id* at 104-105.

Q: And tell me specifically with this permit, what facts do you have that the issuance of this permit and the discharge pursuant to this permit are causing adverse effects and a measurable decrease in crop and livestock production?

A: I can't.

Id at 105.

17. Undisputed facts regarding the allegations of paragraph 3(t) of Clabaugh's Petition:

Clabaugh admitted in his deposition that he could provide no facts to support the allegation in paragraph 3(t) of his petition. Clabaugh could not even relate what the anti-backsliding provisions of the Clean Water Act were. *Id* at 105-106.