

BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

JUL 31 2009

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

DEPARTMENT OF ENVIRONMENTAL QUALITY/WATER
QUALITY DIVISION'S RULE 56.1 STATEMENT

The Department of Environmental Quality, Water Quality Division (DEQ/WQD), by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, sets forth the following facts as to which it is contended that there exists a genuine issue to be tried.

1. A disputed fact regarding the contention contained in paragraph 1 of Clabaugh Ranch, Inc.'s (Clabaugh) Motion for Summary Judgment is that the formula to calculate SAR is merely different, not incorrect showing that there is a genuine issue to be tried. Thomas Dep., at 65.

2. A disputed fact regarding the contention contained in paragraph 2 of Clabaugh's Motion for Summary Judgment is that the question of the scientific validity of Tier 2 has not been answered showing that there is a genuine issue to be tried. Wager Dep., at 12-13.

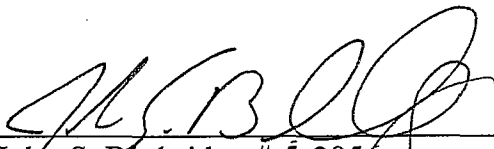
3. A disputed fact regarding the contention contained in paragraph 3 of Clabaugh's Motion for Summary Judgment is that the DEQ/WQD did not violate its own agriculture

use protection policy showing that there is a genuine issue to be tried. Thomas Dep., at 78. Wagner Dep., at 22-23.

4. A disputed fact regarding the contention contained in paragraph 4 of Clabaugh's Motion for Summary Judgment is that the lack of a SAR limit for outfalls 1-12 in Lance's permit is not relevant as Lance cannot intentionally discharge produced water from a reservoir without permission for the DEQ/WQD. A permissive drawdown of a reservoir will not be granted by the DEQ/WQD unless the discharge from a reservoir is protective of downstream irrigation practices and crop and livestock production showing that there is a genuine issue to be tried. Thomas Dep., at 60.

5. A disputed fact regarding the contention contained in paragraph 5 of Clabaugh's Motion for Summary Judgment is that using an average EC is protective of all fields in the a drainage showing that there is a genuine issue to be tried. Thomas Dep., at 60.

DATED this 31st day of July, 2009.



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