

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
OF THE STATE OF WYOMING

**FILED**

AUG 19 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

**ORDER**

On this 18<sup>th</sup> day of August, this matter came on for hearing on the Motions for Summary Judgment filed by the Petitioner and the permittee. Present were Mr. Pat Crank, counsel for the permittee; Mr. Tom Toner, counsel for the Petitioner; and Mr. John Burbridge, counsel for the Department of Environmental Quality.

Present for the Council were Tim Flitner, Presiding Officer, Tom Coverdale, Dr. Fred Ogden, Cathy Guschewsky and John Morris. Present by video conference was Mr. Dennis Boal.

The Council reviewed the parties motions and supporting affidavits, depositions and exhibits to depositions. The Council heard oral argument from the parties.

Mr. Boal moved to grant summary judgment for the Petitioner. Mr. Morris seconded the Motion.

A roll call vote was called. Voting Aye were Morris, Flitner and Ogden. Voting Nay were Boal, Guschewsky and Coverdale. The motion failed to receive the necessary votes for adoption by the

Council. Mr. Coverdale moved to grant Summary Judgment to the Permittee. Ms. Guschewsky

seconded the motion. A roll call vote was called. Voting Aye NONE. Voting Nay: Morris,

Guschewsky, Flitner, Coverdale, Boal and Ogden. The motion failed to receive the votes necessary for adoption.

**WHEREFORE**, neither party received the necessary four (4) votes in support of their motions for summary judgment their motions are hereby denied.

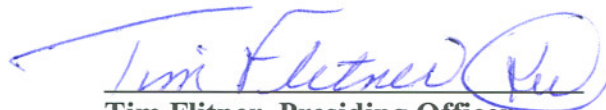
FURTHER, this matter is scheduled for prehearing conference on the 15<sup>th</sup> of September in

Casper, Wyoming. On the Council's own motion the prehearing conference is rescheduled for the 15<sup>th</sup> of September. The parties may appear by telephonic means. The conference will be held at the Council offices in Cheyenne Wyoming at 11:30 a.m.

Pre-hearing memorandums and three copies of all exhibits shall be filed with the Council and served on all parties on or before September 4, 2009. At a minimum the memorandums shall identify the issues of the hearing, will-call and may-call witnesses, exhibits and any other matters the Parties need to have considered at the Prehearing Conference. Any pre-hearing motions shall also be filed at this time. The parties should be prepared to consider a reduction in time for this hearing from five (5) days to three (3) days.

Hearing in this matter was previously scheduled to occur beginning September 28, 2009 and was to be held in Casper, Wyoming. On the Council's own motion the location of this hearing has been changed from Casper, Wyoming to Cheyenne Wyoming.

**SO ORDERED, this 19th day of August 2009.**

  
**Tim Flitner, Presiding Officer**  
**Environmental Quality Council**

## CERTIFICATE OF SERVICE


I, Kim Waring, certify that at Cheyenne, Wyoming, on the 19th day of August, 2009, I served a copy of the foregoing **ORDER** by electronic mail to the following;

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