

Yates's Petroleum Corporation Comments
EQC Hearing November 6, 2008

My name is Tim Barber. I work for Yates Petroleum Corporation and am presenting testimony on their behalf.

Mr. Chairman and members of the Council – Yates Petroleum appreciates the opportunity to offer comments on the Sec. 20 – Agriculture Protection Rule.

Livestock Watering

- Yates supports the current Livestock Watering limits of 5,000 mg/L TDS, 3,000 mg/L sulfate, and 2000 mg/L chloride, as proposed to the EQC by the Waste and Water Advisory Board and the DEQ.
 - The existing limits are protective of livestock watering, as has been shown by many decades of beneficial use in the Big Horn Basin and other areas of Wyoming.
 - Previous landowner testimony in front of the WWAB and DEQ has been overwhelmingly in support of the current standards and opposed to any changes. DEQ and WWAB have made the correct recommendations to the EQC based on public input and on the ground Wyoming experience.
 - Any reduction in limits from the current standards will result in less water available to livestock and wildlife - particularly if the grandfather provision, exempting pre January 1, 1998 discharges, is removed from the rule.

- Yates does not agree with any changes to the livestock watering standards, based on the UW Report.
 - We believe the recommendations of the UW Report are extremely over conservative and are based on less than 0 risk.

- The UW Report is also based on studies reflecting stressful feedlot conditions and is not representative of Wyoming open range conditions and decades of Wyoming experience.

Livestock Watering Waivers

- Yates supports the use of Livestock Watering Waivers, whereby Landowners have the opportunity to waive the standards, and utilize the water for their own benefit. Many landowners have supported the use of livestock waivers for purposes of using available water.
- We agree with DEQ's recommendation to move the livestock watering waiver back into the Rule, as well as keep it in the Agriculture Use Protection Policy Section of Chapter #1. There was no direction given to DEQ by the WWAB to remove the Livestock Watering Waiver from the Sec. 20 Rule.
- If requested by a landowner or multiple landowners, Yates believes the DEQ WQD should be required to grant the livestock watering waiver, unless written objections are received from other landowners who are *reasonably expected* to have flow from the discharge, through their lands.

Miscellaneous

- We oppose any provision in Appendix H that allows a landowner to block the flow of produced water that meets livestock watering standards down the state's watercourse easement.
- When produced water meets the livestock effluent limits, it is a water of the state and should be allowed to flow down the water course.

Irrigation Comments

- Yates supports the three tiered approach to setting irrigation standards, as recommended by the DEQ and WWAB.
- Yates believes that the Tier 1 default cap of 10 for SAR is very conservative.
 - Yates requests that the EQC consider setting the default Tier 1 SAR cap at 16.
 - The scientific research of Kevin Harvey and the USDA Bridger Plant Material Center provides evidence demonstrating a default SAR cap of 16 and corresponding EC of 2,700 $\mu\text{mhos/cm}$ is more representative of crop production for northern Wyoming and southern Montana, based on local soil, water, and climatic conditions.
 - Appendix H relies on the Salt Tolerance Database published by the USDA Agricultural Research Service in establishing the Tier 1 “default” effluent limits applicable to irrigation uses. This is inconsistent with the WWAB’s initial recommendation that limits be adopted pursuant to two reports submitted by Kevin Harvey which proposed an effluent limit for specific conductance (EC) of 2700 $\mu\text{mhos/cm}$ and a cap on the sodium adsorption ratio (SAR) limit of 16.
 - Tier II provides an appropriate mechanism for determining site specific irrigation limits based on natural background water quality.
 - Tier III is an appropriate mechanism for determining site specific irrigation limits based on a rigorous “No Harm Analysis”.
- Yates feels the current/proposed definition of “Naturally irrigated lands” is over reaching. We feel “Naturally irrigated lands” should be

limited to lands which are truly irrigated by natural events at an annual frequency, not just lowlands that have some enhanced vegetative production due to direct precipitation.

- Yates is concerned that the term “Naturally irrigated bottomlands” may be misapplied to protect every low lying area with stringent irrigation standards, at the expense of allowing landowners the opportunity to utilize produced water for livestock watering purposes.
- Some have asserted that all bottom lands must be protected with the most stringent irrigation standards for alfalfa. Application of alfalfa irrigation standards for all bottomlands is not realistic and will certainly result in the inability of many ranchers to enjoy the benefit of produced water for livestock drinking purposes.
- Yates supports the DEQ’s determination (and the WWAB’s direction) that naturally irrigated lands must be at least 20-acres in cumulative size or 50 feet in width in order to be considered as such.
- Yates also supports the irrigation waiver that would allow landowners the opportunity to waive irrigation standards, on irrigated lands, where the landowner determines they will receive greater benefit by having water available for livestock drinking purposes.
 - We believe the landowner is best suited to make his or her own determination of the best use of the water for their operations.
- Finally, Yates requests inclusion of a “non-severability” clause in the final rule when the Chapter 1 rules are submitted to the U.S. Environmental Protection Agency (EPA) for final approval.
 - This will ensure that the entire rule remains intact.
- Again, Yates would like to thank the Council for the opportunity to comment.