

TESTIMONY – 2006 & 2007
Environmental Quality Council Hearings
CHAPTER 2 WATER QUALITY RULES AND REGULATIONS

Resubmitted by

WYOMING STOCK GROWER'S ASSOCIATION

August 26, 2008

EQC Hearing Testimony

July 17, 2006

1 about.

2 And I'd urge the Council to move this
3 forward to, to a hearing before the public. Thank
4 you very much.

16:15:57 5 MS. FLITNER: Thank you, Steve.

6 Ken Hamilton, and Joanne, I believe it's
7 Tweakly, Tweedy, after Ken.

8 Thank you. Just giving you warning.

9 MR. HAMILTON: Thank you, Madam
16:16:13 10 Chairman. My name's Ken Hamilton.

11 I work for the Wyoming Farm Bureau
12 Federation. There's two items here that I'm going
13 to try to address, and hopefully do so briefly.

14 One of them is whether, the issue of
16:16:24 15 whether the Environmental Quality Act allows the
16 Environmental Quality Council to address water
17 quantity issues. In our previous arguments, and I
18 won't reiterate those, we argued they did not.

19 We would urge you to review our
16:16:39 20 arguments. And I think that those are, are very,
21 in my opinion, persuasive as to why not.

22 The second issue that I would like to
23 address deals with the May eighth, I guess,

1 Petition that the Powder River Basin Resource
2 Council submitted. I'm not quite aware of where
3 we're at in this process.

4 However, based on this latest
16:17:02 5 submission, Appendix I, I'm not altogether sure
6 that you haven't, if you were to go forward with
7 this and adopt it, you wouldn't set your regulatory
8 agency up for a classic Catch-22 situation. And by
9 that, I'm saying that before anybody can apply for
16:17:19 10 produced water, they must comply with Sections
11 A-iii, and three little Is, none of which, in my
12 opinion, would allow for any discharge of water to
13 occur.

14 Now, why is that something of interest
16:17:34 15 to the agricultural community? I've heard a lot of
16 folks talk about the agricultural community here
17 today.

18 Number one, initially our concerns were
19 with the impact this proposed Rule would have on
16:17:46 20 agricultural users other than perhaps just coalbed
21 methane. And I understand the Petitioners have
22 narrowed that down to just dealing strictly with
23 coalbed methane.

1 But looking at the Proposal that they
2 have submitted, I would argue that anyone who
3 currently uses coalbed methane water and the
4 Petition, or their Permit, that if that is to be
16:18:10 5 renewed, in order to comply with these, if they're
6 adopted, it would virtually eliminate the ability
7 to use that. So, I think that that's an important
8 thing to consider, is how much, how far down this
9 path we want to go.

16:18:23 10 Again, I think the Environmental Quality
11 Council has a tremendous burden here to try and
12 decide about this, but we would argue that water
13 quantity issues were not given to the Environmental
14 Quality Council, or the Environmental Quality Act
16:18:41 15 give that to this Council to regulate.

16 Unless there is any questions, that's
17 all I have.

18 MS. FLITNER: Thank you.

19 Joanne, followed by Carolyn Hamilton, or
16:18:58 20 Caroline Hamilton, and Lee Eisenberger (phonetic)
21 after that.

22 MS. TWEEDY: Good afternoon, Ladies and
23 Gentlemen. Thank you for allowing me to speak to

1 you today.

2 I am here with high hopes that you will
3 listen to me. We are against this Petition in
4 many, many ways.

16:19:23 5 We are not organized, as the Powder
6 River Resource Council is, but I would like to
7 speak for myself as a rancher, and, and with, with
8 methane operation on our place for five and six
9 years. And I would like to speak for some people
16:19:39 10 back here that will not speak again in the interest
11 of time, and for many of my friends and neighbors.

12 They would have come. We thought we
13 weren't going to be able to testify, and so they
14 did not come.

16:19:54 15 I can get many, many more here to, to
16 speak to you if that becomes necessary. I
17 understand the Petitioners have about 19 Petitions,
18 and I know one of the, one of the development
19 companies on our ranch alone has 500 people that,
16:20:13 20 that, that they work with.

21 I would say 19 against ten, 500, or
22 2,000 ranchers certainly doesn't make for wanting
23 to change the Rules. Under this Petition, the, the

1 landowner water users have to be, be, be
2 predetermined, and the quantities have to be
3 permitted by the Wyoming DEQ.

4 This would eliminate the current
16:20:40 5 flexibility of utilizing stock tanks, managed
6 irrigations, and in-stream livestock watering,
7 unless each one is identified by the Applicant up
8 front, and the quantities are defined in the NPDES
9 PERT before any water occurs. This would require
16:20:59 10 additional regulatory approval for every stock tank
11 and for every in-stream use by our livestock.

12 The -- I use the water -- We use the
13 water development on our ranch for cattle and
14 livestock operation. We do not irrigate.

16:21:16 15 Without this water during the drought
16 since 1999, our whole ranching operation would have
17 had, had to have been utilized differently. We did
18 use this water.

19 We had it in different areas of our
16:21:29 20 pastures, and our livestock used it to benefit them
21 and the benefit of cash, because they weighed more
22 because they had water, and less, less places to go
23 to get it, or more places to go to get it, they

1 didn't have to go so far. The Petition the Council
2 is hearing would mean that my water would go away,
3 and that my ranch and my neighbors' ranch would
4 suffer.

16:21:56 5 We would be jeopardized. I rely on that
6 water.

7 And I agree with, with the companies as
8 I work with them on what we need to do with it. It
9 is not right for people who are not part of this
16:22:09 10 agreement, and have no stake, and I know some did
11 have stake, but many do not, to come in now and
12 tell me I can't use it.

13 The way I read the Petition, -- I'm not
14 an attorney. I've read it.

16:22:21 15 It is difficult to understand in, in,
16 in, in, in depth. The folks who propose this seem
17 to think that the DEQ should be able to tell how
18 much a cow or a deer or an antelope would drink
19 down to the last drop.

16:22:35 20 That's impossible. On top of that, it
21 isn't how many animals utilize water anyway.

22 If the water's there, they'll drink it.
23 If it's there off and on, they may not even come to

1 look for it until they know it's there again.

2 The water has to be available, and it
3 has to be consistent. I've heard people who
4 brought this Petition tell landowners not to worry
16:23:01 5 about it, because this proposal will not have an
6 effect to their stock watering.

7 That's not true. What their papers say,
8 although it's hard to understand, at least the way
9 I read through it, all the different things that
16:23:14 10 they've filed, that is all water has to be
11 beneficially used, and State Engineer makes the
12 call on whether something is beneficial use or not.

13 Well, the State Engineer doesn't make
14 that decision on our ranch where the water is
16:23:29 15 moving in a stream, so the, the water our cattle
16 drink that flows will no longer be available, if
17 they get what they want. As far as my stock tanks
18 go, the State Engineer doesn't make beneficial use
19 on them either.

16:23:44 20 My ability to water our cattle would be
21 severely impacted if this proposal goes into
22 effect. You should think about that before you
23 make a decision that is going to affect thousands

1 of ranchers in the Basin.

2 The way I understand it, I have a right.

3 I understand and respect other people's right.

4 I have spent a lot of time working with
16:24:11 5 companies on my place. We don't always agree, and
6 everything isn't always going my way.

7 But we can usually get to a solution
8 that everybody's happy with. If the folks who
9 brought this Petition can't or don't want to,
16:24:26 10 that's their business.

11 I'm not going tell them how to run their
12 operation. I would appreciate the same
13 consideration, and not have them change a system
14 that has worked for a long time, and make our
16:24:41 15 agreements with our companies and on our place null
16 and void.

17 That also goes for my neighbor in, in
18 our surrounding area. The, the water on our place
19 is probably different from water in many other
16:24:58 20 places in the Basin.

21 Certainly that must be true. Maybe
22 there are places where we can't irrigate, or, or we
23 can't discharge the water into reservoirs or into

1 tanks.

2 Wherever the water is, the operators
3 must meet water standard, no matter what they do.
4 They have to believe -- This -- They -- It has to
16:25:19 5 -- Even though it's different, it is not a
6 one-size-fits-all.

7 The overwhelming majority of the
8 landowners, in the, in, in the thousands, once
9 again I would like to, to explain and reiterate,
16:25:35 10 want and need this water. I can bring you a
11 Petition if you choose, but we didn't have, we
12 don't have as many people.

13 I am speaking for two back here. If we
14 were to petition the landowners who are in favor of
16:25:51 15 benefit from CBM water, we would certainly have
16 more than 19.

17 If the science is uncertain, don't
18 change the Rules and harm those of us using the
19 water. Let's wait.

16:26:04 20 Let's make sure the science is correct.
21 And once it is correct, let's go forward.

22 I can tell you personally that I have
23 seen my friends and neighbors who have coalbed

1 methane. The lines from their face have been gone,
2 and things have gone well for the last five or six
3 years, due to coalbed methane.

4 Water is a part of that. Yes, there are
16:26:29 5 issues.

6 I understand that. But please, please,
7 think really hard before you change Rules, and
8 change for, for Petitions that, that, to change
9 everybody's Rules then.

16:26:45 10 Thank you.

11 THE CHAIR: May I ask you a question?

12 MS. TWEEDY: Yes.

13 THE CHAIR: Thank you. In 2002, the
14 ranch that I'm on signed an Agreement with the
16:26:58 15 company to use the water.

16 We, we basically said we would be glad
17 to take that water, and we benefit from that water.
18 Appendix H means this: They don't have to come
19 and, and, to me and say, "Will you use that water?"

16:27:13 20 It seems to me a property rights issue
21 is at stake, and I didn't -- I just wanted to ask
22 your advice on whether a person having a signature
23 saying you'll agree to put this water to use on my

1 place, in stock tanks, in reservoirs, in stream
2 channels, with managed irrigation, whatever that
3 is, is that a problem, do you see?

4 MS. TWEEDY: No. As I understand you're
16:27:42 5 asking it, we were asked: Did we want the water?

6 THE CHAIR: Um-hum.

7 MS. TWEEDY: And could we use it for
8 cattle, livestock, whatever we wanted to use it
9 for? And, yes, we did sign.

16:27:52 10 And, no, I don't see that as an issue,
11 or as a problem. Excuse me.

12 We took one of our neighbors' water
13 because they were concerned about it at that time
14 because it was new. And our water in our area is
16:28:05 15 excellent water, better than I drank all my life.

16 And, and after it was discharged and
17 the, and the pipes had gone in to our ranch, in to
18 our reservoirs, they changed their mind and, and
19 wanted the water. But by that time, the
16:28:21 20 infrastructure was already in and we, and we took
21 their water.

22 But if I'm understanding you correctly,
23 no, I don't see that as a problem.

1 THE CHAIR: Okay.

2 MS. TWEEDY: No.

3 THE CHAIR: Thank you.

4 MS. TWEEDY: Questions?

16:28:36 5 MS. FLITNER: Thank you.

6 Is it Carolyn?

7 MS. HAMILTON: Caroline.

8 MS. FLITNER: Caroline, welcome.

9 Lee Eisenberger after that, followed by

16:28:48 10 Bob Bache. And feel free to correct my --

11 MS. HAMILTON: Thank you for letting me

12 speak. I'll agree with the previous two speakers.

13 We, ourselves, have coalbed development

14 on our property, and discharge of the water has

16:29:04 15 enhanced the grass and pasture land on our property

16 that they, we own on Lower Prairie Dog in northern

17 Sheridan. Irrigators and support personnel have

18 been more than agreeable in continuing with a

19 win-win solution, and increase in resources and

16:29:20 20 production, and assistance with, with our

21 grassland.

22 So, many of our neighbors in the area

23 are just waiting and waiting for the development,

1 because, especially in this dry year, grass, grass
2 and pastureland could be enhanced with, with water
3 that they don't have now. And the fires, as you
4 know, in, in, the fires in, in Montana are just
16:29:44 5 increasing as we speak.

6 So, I oppose any changes in Rules and
7 rule-making. Thank you.

8 MS. FLITNER: Thank you.

9 Questions?

16:29:52 10 (Whereupon, no response was had.)

11 MS. FLITNER: Thank you, Caroline.

12 Lee Eisenberger.

13 MR. EISENBERGER: Thank you, Ladies and
14 Gentlemen of the Commission. We own a ranch on
16:30:08 15 Campbell/Converse County Line.

16 We're in the south end of the Powder
17 River Basin. Our water there is a lot different
18 than the water that's north, and we all know that.

19 They know that. And one thing that I
16:30:20 20 can see that we need to do here is have
21 site-specific on water, because you can't have a
22 blanket policy to cover all the water, because the
23 water's different from one ranch to the other.

1 We've got a well at our house that we
2 can't bring the water out of. I can go to the
3 methane water that's pumped into my corrals, and
4 drink it and be completely fine.

16:30:40 5 But the water that we have right there
6 at our house, can't drink. It's that -- I mean,
7 and the wells are within 300 yards of each other.

8 And so you can't have one blanket policy
9 cover all the water in, in the Powder River Basin.

16:30:53 10 It's not going to work.

11 You need to have more site-specific.
12 Some of the things that we've used, we've used it
13 for stock water.

14 We've planted fish. We use -- The
16:31:08 15 wildlife has utilized the water probably more,
16 even, than our livestock have.

17 The wildlife is more plentiful. We have
18 more species out there now than we ever have
19 before.

16:31:22 20 We've got ducks and geese that nest
21 year-round on us that are there that have never
22 been there before, before we had the methane water,
23 which also enhances the sportsman's, you know,

1 being able to come out and duck hunt or goose hunt
2 or whatever they wanted to. We also use it for
3 irrigation on our trees around our house, and we've
4 had no problem with the water.

16:31:43 5 We have had no problem killing of any of
6 the trees. We have red cedars, Colorado blue
7 spruce, elm, caragana, Russian olive, and lilacs,
8 and we haven't killed anything yet with the water
9 that we have there.

16:31:58 10 So, the water quality is one thing we
11 need to work on. And one other thing is, as they
12 were talking a little bit about the erosion and the
13 soil damage.

14 And we have not had any of that with
16:32:17 15 methane water, because most of the channels at our
16 place have been fairly well grassed over for the
17 last five years, or six years, because we haven't
18 had any runoff water to take that grass out. So,
19 we've had no erosion problems and we've had no soil
16:32:32 20 damage from salinity in the water.

21 That's all I have. Thank you.

22 THE CHAIR: Thank you.

23 MS. FLITNER: Thank you.

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1 that continue.

2 MR. GORDON: Thank you.

3 MR. BLAKESLY: Thank you.

4 MR. GORDON: Thank you very much. I have
5 Keith Hamilton.

6 MR. HAMILTON: What I was going to talk about
7 tonight is the same thing you guys have already heard.
8 I'm the Northwest District Director of the Wyoming Farm
9 Bureau. I represent the Big Horn Basin. The comments
10 that I have tonight have been submitted. It has to do
11 whether you guys actually have the authority to
12 regulate the quantity of water.

13 So if you've already -- if this is an
14 inappropriate time to present these again, why then
15 maybe I should wait until we can deal with it in
16 Buffalo. That's why I posed the question. You know, I
17 can read these. I can present them again.

18 MR. GORDON: Are those the same comments that
19 Ken Hamilton presented?

20 MR. HAMILTON: Right.

21 MR. GORDON: I mean, duly noted. And in
22 response, I would say that that is absolutely part of
23 what we're wrestling with. They're very good points.

24 MR. HAMILTON: So what you've said just
25 lately is that you will be putting this stuff together

1 and presenting it again in Buffalo or at the Buffalo
2 meeting, so that we'll -- maybe we should wait until
3 then and proceed after that. You're aware of what our
4 concerns are as far as this at this point in time?

5 MR. GORDON: Right. And in response, I
6 guess, you know, one of the things that is concerning
7 to me, I think the Council has tried very hard to move
8 in a very deliberate fashion here. And there have been
9 -- we've had a lot of help and all of that's been
10 good.

11 I guess I hope nobody thinks that the Council
12 is anxious to jump any claims, because we certainly are
13 not. Our authority is very prescribed. And so I
14 appreciate those comments, and they're very, very
15 valuable.

16 MR. HAMILTON: I work with Marvin a lot, the
17 speaker before me, as it relates to sage grouse in this
18 area. We both serve on the sage grouse committee.
19 We're very cognizant of the fact that if it wasn't for
20 the methane water, our sage grouse -- particularly in
21 the year 2006 as it related to the drought in the Big
22 Horn Basin -- would be in desperate need.

23 We in agriculture are very supportive of what
24 the oil business has done for us, in particular over in
25 the western side of the Big Horn Basin. A lot of

1 irrigation takes place, and a lot of wildlife need that
2 water. A lot of livestock drink it, so we're just
3 again reiterating the fact that we don't want the same
4 rules that apply here to apply to the Powder River
5 Basin. With that, I thank you for the opportunity to
6 be here and even with short notice.

7 MR. GORDON: Thank you very, very much. I
8 have Susie Naker.

9 MS. NAKER: That's okay, we'll save our
10 comments for the hearing on the petition.

11 MR. GORDON: Okay, all right.

12 MS. NAKER: That's what I thought you were
13 doing tonight.

14 MR. GORDON: I wanted -- I really wanted to
15 have the opportunity just to sort of get a sense of how
16 practices are being conducted in the Basin, so, thank
17 you. I have Barry Adolf.

18 MR. ADOLF: No comment.

19 MR. GORDON: How about Lee Campbell.

20 MR. CAMPBELL: Brief comments, Mr. Chairman.

21 MR. GORDON: Thank you.

22 MR. CAMPBELL: Hot Springs County submitted
23 extensive comments back in early February on this
24 matter. And so we're in a position that we're one of
25 the parties that helped formulate this compromise that

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1 CHAIRMAN GORDON: Could you just restate --
2 there was a slide early in your presentation in which you
3 talked about TDS and sulfates.

4 Could you just restate what you did there? I
5 think it's probably your second or third slide.

6 MS. HUNTER: What was the subject? Do you
7 remember?

8 CHAIRMAN GORDON: Well, I think you were
9 talking about TDS and why you were not considering --

10 MS. HUNTER: Oh. It's this one.

11 TDS, of course, is the measure of a number of
12 different constituents. Sulfate is generally a part of
13 TDS; but because it addresses a separate regulatory issue
14 here, it's redundant to talk about sulfate toxicity and
15 then TDS toxicity if we include sulfate in that TDS
16 measure. So we're talking about other constituents of TDS.

17 CHAIRMAN GORDON: Okay.

18 MS. FLITNER: Other questions? No. Okay.

19 Thank you, Penny.

20 Keith, if I understand your earlier comments, you
21 would like Dan Arthur?

22 MR. BURRON: Correct. If we could, I think
23 first Mr. Flitner and then Mr. McCarty.

24 MR. MCCARTY: Chairman Flitner and members
25 of the Council, good afternoon. Pardon me.

1 My name is Mick McCarty. I'm from Cody, Wyoming.
2 I'm an attorney and a rancher. Don't hold the first part
3 against me. Today I'm representing myself, and you know
4 what they say about lawyers that represent themselves. The
5 old saying is they have a fool for a client.

6 But be that as it may, I'm representing our
7 family ranching operation, which is known as McCarty
8 Ranching. We're a third-generation ranching operation, and
9 we're like most people involved in agriculture anymore.
10 You own some land and you lease some land and you operate
11 some land.

12 Because of this, we have the ability to operate
13 different herds in different fashions and compare that
14 performance. On our own ranch, which is south of Cody, we
15 operate what I call a range cow operation. In other words,
16 we try to operate so that our cows never eat any
17 processed forage. They don't -- we try and operate so they
18 don't eat any hay. They eat mineral supplement, natural
19 grass and protein blocks -- protein supplements.

20 These cows are the cows that I gave an opinion to
21 to Penny. In the summer they run west of Highway 20 on the
22 face of Carter Mountain, and in the winter they run on BLM
23 permits in the Oregon Basin. And they're there from
24 November 1st to May 1st. Their sole source of water, with
25 very, very few exceptions, is oil field discharge water.

1 And I can tell you that that oil field discharge
2 water and sulfur -- and I'm not a scientist -- pushes the
3 upper limits of all that has been discussed here today. So
4 being able to compare that group of cows to other group of
5 cows that we operate, we were always curious about this
6 water.

7 And the fact is we were curious at the outset
8 about this water and hired a nutritionist to analyze it.
9 His name is Dr. Trey Patterson, who's head of the animal
10 science department at the University of South Dakota; and
11 his father and he have a company. And now he's comanager
12 of Padlock. So he's a Wyoming guy and familiar with these
13 issues.

14 So what measurements do we apply in ordinary
15 operations? We don't apply very scientific type of
16 measurements. But, you know, an easy one is what's your
17 death loss? Well, on this herd our death loss is less than
18 1 percent a year.

19 What percent of your cows are bred in the fall
20 when you pregnant-test? And this year it exceeds
21 95 percent. What percent of these cows delivered a
22 live-weaned calf? And for six years it's been over
23 94 percent.

24 How do these cows do on a day-to-day basis?
25 Well, the animal scientists have a score system from one to

1 ten in the skinniest cow you ever saw to the fattest cow
2 you ever saw, and they say range cows should be right in
3 the middle at a body condition score of five. And it's a
4 little mesenteric applying that on a herd, but we believe
5 that we maintain that body condition score of five
6 throughout the year.

7 These cows -- and I can't tell you why --
8 operated in this group perform better than our other
9 groups. And it may be the terrain, it may be the grass, I
10 don't know; but there isn't anything adverse from their
11 drinking this high water with -- high sulfur content water.
12 As far as I know, they're drinking it today; and that's all
13 they have to drink today.

14 There are some people that say that that warm
15 discharge water -- cows like it. It reduces their caloric
16 intake, and it may -- I know they prefer the warm discharge
17 water.

18 You know, I'm not here talking about coalbed
19 methane discharge water, because I don't know about it; and
20 I'm not here arguing rancher against rancher. I have a
21 little problem with one group of ranchers wanting one thing
22 and one another.

23 But I guess from my perspective -- I guess what
24 I'm saying to you as a council is that one size is not
25 going to fit all. And one uniform rule imposed in a

1 nuclear fashion -- that seems to be a popular word today --
 2 is going to cause a lot of dislocation. It's going to
 3 cause a lot of harm to existing ranchers. It's going to
 4 cause a lot of harm to wildlife that depend on it, and it's
 5 going to cause a lot of harm to ranchers and business.
 6 I think that you're going to have to make some
 7 definitions of how it's applied and when it's applied, and
 8 that's going to be a big job.
 9 I thank you for the opportunity to be here today.
 10 I've got to cut this short because I know your time
 11 schedule and I know my time schedule; but if you have some
 12 questions, I'd be happy to answer them.
 13 MS. FLITNER: Thank you.
 14 Questions? Thank you.
 15 I believe Greg is next on deck. Dan Arthur will
 16 follow.
 17 We have nine people slated to testify today, so
 18 I'll remind you of a couple of things while Greg is making
 19 his way to the podium, especially since this is probably
 20 the only time anyone related to me might ever listen.
 21 We would like to limit the testimony to
 22 five minutes or under. My plan is get through these nine,
 23 plus Greg and Dan Arthur. So we need your help and
 24 cooperation to do that. We have letters from your
 25 past testimony -- we have letters that have been submitted

1 water out there.
 2 We've seen no evidence of water quality problems
 3 in our livestock from the produced water. Our calves seem
 4 to grade in the top 5 percent in the region for quality,
 5 according to ConAgra. And weaning weights from our calves
 6 on produced water as compared to other pastures throughout
 7 the ranch are as heavy or heavier than those calves. And
 8 in a lot of cases, they're heavier; and some of it may be
 9 attributed because the availability of the water is there.
 10 And I guess in all my years of riding out there
 11 I've never seen a wild horse that was adversely affected by
 12 the water. Maybe there's been, but I've not seen one. The
 13 only problem I can see with the produced water out there is
 14 if it ever quits. If it stops flowing, it would have a
 15 tremendous economic impact on our ranch and, in turn,
 16 rendering a large portion of our range unusable, resulting
 17 in a loss of jobs and possibly crippling our outfit to the
 18 point where it would no longer make sense to operate.
 19 That's all I have.
 20 MS. FLITNER: Thank you.
 21 Questions for Greg? Thank you.
 22 Dan Arthur is on, and on deck is Jeremy
 23 Butterfield, followed by Brad Basse or Basse. Pardon me if
 24 I get the pronunciations wrong.
 25 MR. ARTHUR: Madam Chairman, Council

1 into the record, and we have revisited past testimony; so
 2 new information is helpful and redundant information is
 3 redundant.
 4 Thank you.
 5 MR. FLITNER: Mrs. Flitner and members of
 6 the committee, I want to thank you for giving me the
 7 opportunity to get up here. I'm not much of a speaker,
 8 but -- especially following Nick.
 9 But we do run out there on some of this produced
 10 water. My wife Pam and I and my father and his wife -- we
 11 have a horse, cattle, farming and recreation operation
 12 which we run on private BLM state and Bighorn Park in
 13 Johnson County.
 14 We run a couple thousand head of cows and a
 15 couple hundred head of horses, and we've been there for a
 16 hundred years as of last summer -- the family. A large
 17 percentage of our herd runs on the produced water at
 18 different times of the year; spring, fall and some in the
 19 summer. There's about 500 head out there now that -- like
 20 Nick was talking a minute ago, that's the only water they
 21 have and will have for another month.
 22 So -- and the other thing -- there's about 500
 23 head of wild horses on that same country out there that
 24 primarily use that as their water source, especially over
 25 the past six, seven years where there hasn't been a lot of

1 members, thank you for having me.
 2 My name is Dan Arthur. I'm a registered
 3 professional engineer in the state of Wyoming. I'm a
 4 current researcher for the U.S. Department of Energy and
 5 have been since 1990. I've been working in the area of
 6 coalbed natural gas and produced water since 1988,
 7 beginning in the state of Alabama and have been working on
 8 produced water, coalbed natural gas research for the
 9 Department of Energy for about the last ten years.
 10 For my presentation, looking at the rationale for
 11 increasing stringency, I looked at a few different things.
 12 First, why you would do that; and that would be, ideally, I
 13 would assume, to alleviate perceived threats or
 14 environmental risk to surface streams, livestock, wildlife,
 15 and then identifying have threats been technically defined.
 16 That's one of the concerns that I have, is looking at the
 17 evidence that's been presented. The various research out
 18 there is that the threats do not appear to be very
 19 technically defined.
 20 And if there is a threat, is increased stringency
 21 technically justified? And as a Department of Energy
 22 researcher, my mission is to be looking at sound science,
 23 very technically supported decisions and to attempt my best
 24 to -- to consider things that are not specifically
 25 technical in nature.

1 throw something at you if you go over five minutes.
 2 MR. BUTTERFIELD: As said, my name is
 3 Jeremy Butterfield, landowner on Cottonwood Creek.
 4 We use the discharge water for our livestock and
 5 our irrigation and that. I work down at the bottom of the
 6 creek; so, I mean, if the water gets worse and comes down,
 7 we haven't seen it.
 8 As it is right now, we usually get three cutting
 9 a year of our alfalfa, enough to run a thousand head of
 10 sheep. Without the discharge water, we would be lucky to
 11 get a good first crop -- probably pretty much put us under.
 12 As far as the wildlife and that on this creek, I
 13 haven't -- we've got deer that eat in the hay fields all
 14 year long. They drink in the creeks. I haven't seen
 15 nothing wrong with any of them. Our sheep does fine.
 16 We have fish and that that's in the creek; and as
 17 far as they look, they're healthy. I mean, it's better
 18 than the alternative because up the creek it's dry before
 19 they discharge water.
 20 I guess they asked where the offsite landowners
 21 got any profit out of the water, and I'd say that's pretty
 22 much it. I mean, it keeps us in business, so that's where
 23 I say the offsite landowners make their profit.
 24 I would like to see the two studies done that
 25 they're doing. You know, the coalbed methane task force is

1 other people that are having problems.
 2 MR. BUTTERFIELD: Yeah. We're in the
 3 Bighorn Basin; and, I mean, everybody over there's happy
 4 with it and would like to leave it the way it was and keep
 5 going.
 6 MR. MORRIS: Everything's okay in your
 7 area?
 8 MR. BUTTERFIELD: Yeah.
 9 MS. FLITNER: Thank you very much.
 10 Brad, and after that we have Gene Litton followed
 11 by a Teresa Brown.
 12 I think it would be helpful when you identify
 13 yourself if you would identify for us where you are located
 14 so we can understand how this affects you by area.
 15 MR. BASSE: Chairman Flitner and the rest
 16 of the Commission, I thank you for the opportunity to speak
 17 to you today.
 18 I am Brad Basse. I am the chairman of the Hot
 19 Springs County Commission.
 20 As I sat through these hearings today, I jotted
 21 down a few notes, so my discussion may be a little bit
 22 diverse here.
 23 But it seems to me that the biggest issue -- and
 24 I recognize the problem that you have. You're dealing
 25 with, it seems, primarily coalbed methane water. I can see

1 doing a study on the impact of the water and that and the
 2 study that they talked about earlier. I mean, we paid for
 3 it. We just as well see what it comes out at before we
 4 make a decision.
 5 And I guess I just wanted to say how important it
 6 was to us and everything, so -- any questions?
 7 MR. MORRIS: Are you on the same outfall of
 8 some of these other people that are having problems?
 9 MR. BUTTERFIELD: No. As far as I know,
 10 everybody on the creek's tickled with the water and --
 11 MR. MORRIS: Are you on the same drainage?
 12 MR. BUTTERFIELD: No, everybody on the
 13 drainage is happy with the water and wants to keep it. I
 14 mean, even the people that ain't irrigating with it, their
 15 livestock drinks it. And when you start hauling water,
 16 you're talking a lot of money and pretty much have your
 17 days shot every day. So it's a big help that way.
 18 CHAIRMAN GORDON: Are you in the
 19 Thermopolis area?
 20 MR. BUTTERFIELD: I'm in Washakie County,
 21 but Cottonwood Creek -- it kind of cuts off sideways. I'm
 22 at the bottom end and on the top end of Cottonwood in Hot
 23 Springs County.
 24 MR. MORRIS: That's what I was getting at.
 25 You're in a different area from some of these

1 the problem with these affected landowners in the Powder
 2 River Basin. They've got problems. We see the pictures
 3 and I recognize that.
 4 But I think that the separation between coalbed
 5 methane and production-produced water from conventional oil
 6 and gas needs to be delineated. You know, we've seen the
 7 opinion of the attorney general that doing that through
 8 this rule-making process may not stand up to a legal
 9 challenge.
 10 Therein lies Hot Springs County's concern that
 11 you may say, Okay, we'll grandfather in conventional
 12 production and Hot Springs County will be okay; but when
 13 that other group out there -- whoever that may be --
 14 decides that they want to challenge that, then we may be
 15 headed down this road all over again.
 16 I would say that we've talked about this nuclear
 17 option; and from the slides that I've seen and from the
 18 discussion I've had with some of the producers in Hot
 19 Springs County, the effluent limits that are proposed would
 20 be a nuclear option in Hot Springs County. Merit Energy is
 21 the largest single taxpayer in Hot Springs County.
 22 If it renders their operation economically
 23 unfeasible and they shut that field down, what do I tell to
 24 the 4700 citizens of Hot Springs County why we let that
 25 happen?

1 You mentioned earlier that, you know, Tongue and
 2 Sheep -- that the next meeting ought to be held on a yacht.
 3 I really think the next meeting ought to be held somewhere
 4 in the Bighorn Basin; because, as you heard from the prior
 5 gentleman here -- and I know this is an issue in Park
 6 County and I know it's an issue in Hot Springs County --
 7 and we need to get the input of these people.

8 There's only so many of these hard-working
 9 citizens like him that can take the time off to come to
 10 Cheyenne, which is five hours away, and testify before you.
 11 And I know there's a handful of them here today, and many
 12 of them are much more eloquent at speaking than I; but I
 13 know there's several dozen more at home that would really
 14 like the opportunity to speak with you about this issue.

15 And it's not only Merit Energy. Hot Springs
 16 County -- we live and die by the price of oil. 70 percent
 17 plus of our assessed valuation is oil. The slide that was
 18 presented by the gentleman from the -- two times ago -- I'm
 19 not good with names -- no, it was a gal -- talked about 136
 20 jobs lost in Hot Springs County because of this.

21 That's nuclear in Hot Springs County. We
 22 recently had what we think was a home run enticing a
 23 business that employs 12 people in Thermopolis. We just
 24 absolutely cannot stand the loss of 136 jobs. It would
 25 devastate us.

1 And I think it's incumbent upon the petitioners
 2 in this case to prove to us that that's not going to occur.
 3 We have the land use plan for state and federal lands in
 4 place that, according to our attorneys, will hold up in
 5 court. Those issues need to be addressed before issues
 6 like this or decisions like this are made. We need to know
 7 what the impact is going to be in Hot Springs County.

8 I can tell you that the largest single
 9 employer -- private employer, not public employer -- in
 10 Thermopolis is R & S Well Service. There's a
 11 representative back in the back row from that company.
 12 They do workover on oil wells. If we lose these kind of
 13 jobs, those are the kind of companies that go elsewhere.

14 It's a company that's owned by a publicly traded
 15 company. They could just as easily relocate to Utah or
 16 Colorado or somewhere, and those jobs are gone. And that
 17 number, the -- that 136, I can believe every single one of
 18 them.

19 I'm probably over my five minutes, but I would
 20 just like you to know that it would have a severe impact on
 21 Hot Springs County, and I know that there's a number of
 22 other people that are going to discuss the effect on
 23 agriculture and those operations that water is being put to
 24 very beneficial use.

25 We did -- I'm not sure if any of you had the

1 opportunity to attend the tour, but I know the DEQ folks
 2 came up and industry and some of other -- one of the other
 3 county commissioners went around and actually walked the
 4 ground where this water -- as you go above that discharge
 5 and the creek bed's dry and go below it and these people
 6 are using it for livestock watering and irrigation and
 7 wildlife and all of those other issues.

8 So I recognize your dilemma, but I think that it
 9 requires a surgical approach in the Powder River Basin and
 10 not a shotgun approach and blanketing the whole state with
 11 rule-making that has, maybe, unintended consequences.

12 MS. FLITNER: Thank you very much.

13 While Gene Litton makes his way to the stand, I
 14 also want to point out we were in Thermopolis about a year
 15 and a half ago and in Washakie County this fall for a
 16 listening session relating to something else. I just say
 17 that by way of evidencing we share your commitment to
 18 getting around the state, and we'll try to do a better job
 19 of letting you know we're there the next time.

20 But you're right. These hearings are a long way
 21 to go for most people, and we'll try to be sensitive to
 22 that going forward. Thank you very much.

23 Gene will be followed by Teresa Brown.

24 Welcome, Gene.

25 MR. LITTON: Thank you, Ms. Flitner,

1 members of the community. Thank you for your time.

2 My name is Gene Litton, and I'm a southern
 3 Campbell County rancher. You'll have to pardon me that I
 4 don't speak directly to you. Although I wrote these
 5 comments, I'm not good at memory; so I'm going to have to
 6 read them. I'm sorry.

7 The requirements that the Powder River Resource
 8 County petition is asking for would not be acceptable for
 9 our ranch or many other ranches in our area. Some of these
 10 ranches are represented here today with us.

11 First of all, the water in our area is good
 12 enough for human consumption, and that includes the CBM
 13 water. When the CBNG water and our house water were
 14 tested, it was found that if we did not treat our drinking
 15 water with a softener and reverse osmosis, we'd be better
 16 off drinking the CBNG water. It's that good, and we have
 17 no problem with the water.

18 To add to that, we have planted 1200 trees in our
 19 shelter belt, various trees in our ranch yard, we have over
 20 an acre of lawn along with them, and we water with CBM
 21 water, not to mention we have two other home sites where
 22 there are trees, lawns, lots of flowers; and all keep
 23 growing heartily with CBNG water. And a garden also
 24 flourishes on that same water.

25 The petitioners and the EQC are looking at too

1 broad a spectrum with this petition. If, in fact, there is
 2 a water quality problem in our area, why should we all
 3 statewide be put in jeopardy of losing the one sustainable
 4 resource we have counted on for several years? Why should
 5 we be put in a position where our ranch could not operate
 6 as we have in the past where our water is involved?

7 With our water infrastructure in place provided
 8 by the coalbed methane industry, it would be a shame if,
 9 because of proposed regulations, we could no longer use
 10 this established system for our continued ranching
 11 operations. It was designed to be a future asset to our
 12 ranch.

13 I might add that we have had four years of severe
 14 drought, and we've had to reduce our livestock numbers; yet
 15 we have been able to survive and stay in business because
 16 of this good water supply.

17 We could not have done it without that water, yet
 18 I wonder what will happen to us and many other people in
 19 Wyoming if the methane gas industry has to shut down
 20 because of this highly restricted proposal petition.

21 I'm not sure the taxpayers and the legislators
 22 will be happy at loss of that revenue when there are better
 23 ways to handle this matter. I see in a couple of the
 24 papers that the governor states that the oil and gas
 25 industry expects to be drilling between 4 and 5,000 new

1 have built a system that allows us to use this water in the
 2 most beneficial and sustaining way, and this was done with
 3 the help and guidance of the methane companies we have had
 4 the opportunity to work with.

5 Although I have spoken mostly about methane water
 6 because that is the law that affects us at this time, I
 7 have a real concern with the proposed petition before the
 8 committee; and that is, the petition affects all discharge
 9 waters within the state, whether it be from wells, methane
 10 water, stored water, et cetera. And there lies a big
 11 concern.

12 That's why I feel a blanket policy is not the way
 13 to go. Each situation has to be considered on its own
 14 merits. Good water or bad, it's not the same.

15 In these drought years, you can survive with a
 16 little heat, but you cannot survive without water. We have
 17 that water now with the methane water, and we surely don't
 18 want to lose it. We followed the proper procedures with
 19 every well site and discharge of the water from these
 20 wells, and we're happy and we're satisfied.

21 The State of Wyoming -- state engineer's office
 22 has done an outstanding job with the application for water
 23 permits. Let's don't regulate something that is
 24 possible -- impossible to monitor or regulate.

25 Thank you.

1 wells each year for the next four or five years. This
 2 certainly would keep our economy bright.

3 If the proposed petition is accepted as adopted,
 4 many of these wells, and maybe all of them, might not be
 5 able to get a discharge permit that will allow them to
 6 drill, let alone operate their future wells.

7 Therefore, it would be a tragedy for Wyoming to
 8 have to have a blanket policy adopted with a discharge of
 9 methane waters in our state. Why sacrifice the beneficial
 10 use of a good methane discharge water when it's such a
 11 vital asset to our state? There can be rules and
 12 regulations worked out on those waters that are possibly
 13 not as beneficial as others.

14 This could well be developed between the ranchers
 15 and the methane companies and become a win/win situation.
 16 I really don't feel that the methane water will be with us
 17 for a long period of time as it's already in some areas
 18 beginning to decline.

19 Let's not be hasty in adopting a plan that
 20 doesn't take into consideration there are areas that need
 21 and want the water and are willing to negotiate a positive
 22 solution for the discharge or storage and use of that
 23 water.

24 The methane water on our ranch is becoming a most
 25 viable resource, and we could ill afford to lose it. We

1 MS. FLITNER: Thank you. Teresa Brown,
 2 followed by Joe Dennis, please.

3 MS. BROWN: I'm Teresa Brown. My husband,
 4 Matt and I, we have the Diamond Bar Ranch in Thermopolis,
 5 Wyoming, Hot Springs County.

6 I would like to thank the Council for allowing us
 7 to speak today, being that my ride wants to leave and I
 8 don't want to stay in Cheyenne.

9 Madam Chairman and members of the Environmental
 10 Quality Council, thank you for allowing me to address you.

11 I would -- I'm here today to express the
 12 importance of oil field discharge water to our ranch, the
 13 wildlife of the area, the stream channels, the wetlands and
 14 economy of the Bighorn Basin.

15 My husband Matt and I are fourth generation
 16 ranchers. We have four children who have worked hard on
 17 the ranch and have been able to go to college and graduate
 18 with degrees. Our oldest daughter is now in med school.
 19 They've all been a big part of working on this ranch and
 20 helping keep it in the family.

21 Matt is not here today because he's home feeding
 22 calves, opening water holes, getting equipment running
 23 under below-zero temperatures, checking waterlines and
 24 troughs. If the calves were out in the oil field discharge
 25 walking pasture, he could probably be here.

1 We will both attest to the benefits of the oil
2 field discharge water to our family ranching operation. It
3 would be better if we could have these meetings up in the
4 affected areas so that you could see what is happening on
5 the land and also so that more of the landowners could be
6 present to give their testimonies.

7 Oil field discharge water from these small fields
8 provide livestock and the wildlife water to four pastures
9 on our ranch. Oil field discharge water has always been a
10 major water source for these pastures. It has been the
11 only water source since the drought hit in the year 2000.
12 Our livestock and wildlife in the area drink water from the
13 streams year round -- no adverse effects.

14 In addition to using streamflow, we currently
15 pipe oil field discharge water approximately three to four
16 miles and fill five reservoirs which provide water in two
17 pastures. Without this we would not have been able to use
18 any of our leases.

19 Creek channels which have oil field discharge
20 water on our ranch are in far better condition than the
21 ephemeral creek. The year-round oil field discharge water
22 allows wetland vegetation to grow abundantly in the
23 channel, thus stabilizing the creek channels and reducing
24 erosion.

25 The wetlands that develop around these creeks

1 my livestock.

2 My primary concern is your proposed reduction in
3 allowable sulfates from 3,000 milligrams per liter to 500
4 milligrams per liter. I know that credibly the petitioners
5 are requesting that this change only apply to CBM discharge
6 water; but I fear that once the lower standard's been
7 mandated for this coalbed methane water, that lower
8 standard would be eventually forced on conventional --
9 conventional oil well water.

10 From my experience over the last 10 years -- I've
11 only owned this ranch about 12 years, which is probably why
12 I look so much younger than Greg Flitner, who's been there
13 a hundred years -- but I've had the opportunity to observe
14 the behavior of my cattle over the last 10 or 12 years on
15 this high sulfate discharge water compared to previous
16 years, and I've seen no adverse effects on health -- herd
17 health that might be manifested by reduced breeding rates
18 or reduced weaning rates or increased cow or calf
19 mortality.

20 If anything, the opposite's been true; but I
21 think that's probably because of better pasture I'm on now
22 than the ground I used to lease.

23 Also, I have to comment that I've watched the
24 wildlife over the last ten years, and they use this water
25 heavily. And if anything, I've seen wildlife increase,

1 increase the water table of the surrounding areas. This,
2 in turn, provides feed and habitat for the wildlife and
3 livestock. Oil production is the major tax base for Hot
4 Springs County. Oil production is also the economic base
5 for our county. Everyone in Hot Springs County benefits
6 from an economically viable oil industry.

7 The oil fields are some of the oldest in the
8 state. They produce large amounts of water in order to
9 extract the oil from the ground. A change in the rules
10 will force these oil companies to reinject discharge
11 waters; and it is unnecessary, unwarranted and could lead
12 to oil fields shutting in wells and closing fields.

13 Hot Springs County needs these oil companies.
14 Our ranching family needs the water they produce to keep
15 our ranch in business. The environment is enhanced and the
16 wildlife thrives because of this oil field discharge water.

17 Thank you very much.

18 MS. FLITNER: Thank you.

19 Question, anybody?

20 Thanks, Teresa. Drive carefully.

21 Joe Dennis.

22 MR. DENNIS: Yes. I'm Joe Dennis, and I
23 ranch in the Bighorn Basin. And like the other ranchers
24 you have heard from and hear from, I rely heavily on
25 discharge water from gas and oil wells to provide water for

1 especially in animal populations, over the last ten years.

2 But I think whatever you do, you need to be real
3 careful as you change these requirements for sulfates and
4 dissolved solids and barium, because I don't think you're
5 going to be able to differentiate ultimately between water
6 produced from coalbed methane wells and water produced from
7 more conventional oil and gas wells.

8 I don't think it would stand up legally, and some
9 group will change it within the state.

10 Thank you.

11 MS. FLITNER: Thanks.

12 Questions? Thank you.

13 Paul Ward followed by Joel Ohman, it looks like.

14 MR. WARD: Hello. Thank you for hearing me
15 out.

16 MS. FLITNER: Can I get your name?

17 MR. WARD: Paul Ward.

18 I live in Hot Springs County off of Cottonwood
19 Creek, which is by Merit Energy production water, the lower
20 half of it. I want to talk to you about selenium.

21 Back in the 1930s, my family homesteaded the
22 ranch there, and then production water from the Merit
23 Energy Company came about in 1970-something. Before the
24 production water constant flow, they had a problem with
25 selenium disease, which causes abortion, death, blindness

1 in cattle, sheep, horses, what have you.
 2 Since we had the constant flow, we haven't had
 3 one problem with that. I just wanted to make that point
 4 clear. They had some questions on the board.
 5 Thank you for hearing me out.
 6 MS. FLITNER: Thank you.
 7 Questions? Thank you.
 8 Joel, are you here?
 9 And Butch Jellis will be the final testimony, I
 10 believe -- for today, that is.
 11 MR. OHMAN: Madam Chairman, fellow people
 12 of the committee, Joel Ohman, Campbell County -- about
 13 30 miles south in Little West Gillette.
 14 We own ranch lands out there and used to proclaim
 15 to be a rancher, but I think anymore we're more of a land
 16 manager. We've been in this methane now for eight years.
 17 I'm here because I saw a big red flag when I saw
 18 the petition and combined it with the Senate File 55 bill
 19 over in the legislature. What I saw was an effort that
 20 would, in effect, shut down our water discharge, therefore
 21 shutting down the flow of gas. Without these discharge
 22 levels, the gas wouldn't flow.
 23 The shutdown effect was going to become a
 24 horrendous burden to avoid if I were to have to quantify my
 25 beneficial use of this water. I heard the testimony today

1 I have sympathy for those that have a problem
 2 with -- with the damage, and I'm not disputing their
 3 problems. But I am willing to argue the ones you don't see
 4 at all; because those problems are site-specific, and they
 5 truly do need to be corrected -- eliminated, and the effort
 6 that they not recur on others needs to be addressed.
 7 But in that process, those that have successfully
 8 worked with this industry successfully use that water --
 9 and it has worked well -- should not be penalized.
 10 Thank you.
 11 MS. FLITNER: Thank you.
 12 Questions?
 13 Wendy.
 14 MS. HUTCHINSON: I have a question for you.
 15 Do you have -- I assume you have neighbors
 16 downstream from you.
 17 MR. OHMAN: Yes.
 18 MS. HUTCHINSON: Are they able to -- I
 19 assume some of the water coming off is coming off your
 20 property onto theirs.
 21 Are they able to fully utilize it? Do you have
 22 issues downstream from you or any of your neighbors?
 23 MR. OHMAN: No, no downstream issues. In
 24 the initial discharge, which you're aware -- that to pull
 25 the water down -- down to that level where you relieve the

1 that in a 30-degree centigrade day, a cow would consume
 2 20 percent of her body weight. That was his beginning.
 3 Maybe I confused statistical data, maybe we put in
 4 something with the actual meters.
 5 But the goal of the petitioners is to create
 6 regulatory language so that water discharge for beneficial
 7 use is truly used and not simply flushed down the stream.
 8 That was my red flag. Senate File 55 was the enabling act.
 9 So that, therefore, is why I'm here.
 10 We have about 27,600 acres. We've got about 320
 11 methane wells. We've got about 30 discharge points. The
 12 place is fully developed as far as the gas resource is
 13 concerned. It is primarily federal mineral as a
 14 predominant estate. I chose to calculate a little of what
 15 effect this would have if the goal of the petitioners were
 16 to have the effect of shutting down a resource.
 17 Now, after eight years, understand we're close to
 18 that peak point. Methane's a fly-by-night resource, and
 19 the end may be in sight in three or four years. The
 20 production from the gas on our ranch lands with the State
 21 receiving 50 percent of the federal royalty, the State
 22 receiving its severance tax and the County receiving its ad
 23 valorem tax would total over \$2 million each year of the
 24 last three in lost revenue. And 27,600 acres is pretty
 25 small.

1 hydrostatic pressure and the gas commences to flow -- and
 2 the operators will vary their pumps, then, at that point --
 3 in the initial flows, yes, there was some water that came
 4 from above and come down. We knew it would occur, and
 5 initially, there was some methane.
 6 But when they achieved that balance where they're
 7 now operating and have been for the majority of those
 8 years -- it only took 12 to 14 months -- 18 months to
 9 stabilize that district. We have no water flowing in, we
 10 have no water flowing out; and it is very similar all
 11 through our community that it is being utilized.
 12 MS. HUTCHINSON: Now, when you say there
 13 was on the initial because there was more quantity of
 14 water, I assume, on the initial and there might have been
 15 some damages, were those damages prepared or were they
 16 temporary or were they --
 17 MR. OHMAN: We cooperated. We recognized,
 18 you know, with the neighbor, kind of what was going -- he
 19 knew I was going on his side of the fence and he knew what
 20 was coming on my side, up and down. No, we did not have
 21 damage.
 22 MS. HUTCHINSON: Thank you.
 23 CHAIRMAN GORDON: I had a quick question.
 24 You've been in CBM business for eight years, so
 25 you remember what it was like before 2004 when this draft

1 of the regulation was -- became the standard procedure, and
2 I guess prior to 2004, usually the landowners certified
3 that use of the water.

4 MR. OHMAN: Yes.

5 CHAIRMAN GORDON: And in 2004, that
6 water -- the State started certifying the use of that
7 water, not the landowner; and I just wanted your opinion.

8 Is that an appropriate thing for the State to do
9 or should that responsibility rest between the producer and
10 the landowners?

11 MR. OHMAN: Okay. In the process of
12 applying for the discharge permits, one of the requirements
13 was to show a beneficial use. And in that time, a
14 general -- general coverall with that -- it would provide
15 water for domestic livestock and wildlife.

16 There are others in the area that had other
17 beneficial use because they had some land that they
18 considered irrigatable and were going to use it that way.
19 We have no irrigatable lands across our board. It's
20 livestock water, wildlife water -- and I should add --
21 infiltrated. It has replenished sand pockets and holds the
22 sand pocket levels in their Wasatch formation where our
23 stock wells are, which we have 29 of. Several of those are
24 a little old.

25 And after a succession of drought years, they

1 It's odd, we've got 12 operators out there that are work
2 worth, and their name on my list shows up over there, too.
3 So there's -- there's a negotiation problem there that
4 somebody didn't get addressed.

5 MR. MORRIS: Who's the --

6 MR. OHMAN: And that's unfortunate. The
7 damaged salesperson is the landowner.

8 The methane person, their operator didn't take
9 great enough care to prevent the damage or it's a stalemate
10 on negotiations.

11 Now, our surface agreements when they come in
12 came in ahead. I'm glad I had one that wanted to negotiate
13 for seven months hammering the first issues. From then on
14 for succeeding operators, I'm consistent. This one is
15 working -- no change. It's consistent.

16 But that first surface use agreement and getting
17 this worked out, yeah, we were seven months. But I was
18 going to environmental impact assessment hearings, I was
19 viewing the -- what was occurring, which at the time was 10
20 and 12 miles away where it was first beginning. So I was
21 informing myself.

22 MR. MORRIS: What about the people, though,
23 that are downstream that do not have the opportunity to
24 deal with the operators?

25 MR. OHMAN: I believe your regulations

1 would be nonproductive; and they're holding, you know, good
2 water tables. They're usable. So I'm getting the benefit
3 of that infiltration.

4 CHAIRMAN GORDON: I guess my question is
5 you're happy, then, with the State making those
6 determinations rather than you as the landowner?

7 MR. OHMAN: Well, we made the
8 determinations at that time of what the beneficial use was.

9 CHAIRMAN GORDON: Okay.

10 MR. OHMAN: Yeah. And the regulatory
11 mechanism allowed for that.

12 What threw the red flag to me -- what makes me
13 nervous is if I have to quantify that use, and that use
14 that is not quantified would then have to reduce the
15 discharge. The effect of reducing that discharge would
16 curtail the gas flow. When the gas flow's curtailed, the
17 revenue stream stops.

18 CHAIRMAN GORDON: Okay. Thank you.

19 MR. MORRIS: In your opinion, who is
20 responsible to these people who are being damaged? You are
21 not. You're in good shape, but there's a lot of people
22 that are not.

23 In your opinion, who's responsible?

24 MR. OHMAN: That would be a catch-22. I'm
25 going to let squarely on the operators and the landowners.

1 provide that the operator is responsible.

2 MR. MORRIS: I'm just asking you that
3 question.

4 MR. OHMAN: Yeah. Seems like there's
5 something about that in the regs. I can't quote, but my
6 initial reaction is I think it's in there.

7 MS. FLITNER: Thank you very much. Thanks
8 for trying to quote.

9 Anybody else? Thank you, Joel.

10 Butch Jellis is the last person listed as someone
11 who needs to be finished today and on their way.

12 Did we miss anyone?

13 We will finalize this decision at the end of
14 Butch's testimony, but my thought by looking at you and
15 assessing how I feel after sitting here for eight or
16 nine hours -- I think people are probably ready to adjourn
17 until tomorrow morning. That's likely what we'll do.

18 MR. JELLIS: This will be very quick.
19 Madam Chairwoman, Council, I've got a letter here that I'm
20 going to read.

21 My name is Butch Jellis. I'm from Sheridan. I'm
22 representing the Wrench Ranch. I'm reading this letter
23 that my partner has wrote to the WYOMING ENVIRONMENTAL
24 Quality Council.

25 The subject of methane gas water use has plagued

1 landowners and the gas industry since the earliest CBM
 2 development. Yes, there were abuses in the Gillette area
 3 early on. The industry learned quickly and has adhered to
 4 ever-changing DEQ regulations.
 5 As a large landowner just north of Sheridan, I
 6 say leave the regulations for coalbed methane gas water use
 7 as they stand. The water is vital to the cattle on the
 8 hills where drought has obliterated nature's water. On the
 9 Wrench Ranch we mix CBM water with mountain water in a
 10 large reservoir for use through pivots on the hay fields.
 11 Again, this enables us to have a hay crop --
 12 diminished, yes, but a hay crop. As ranchers, we have
 13 always used water from coal seams in our houses, on our
 14 lawns and gardens and for our cattle. Fidelity has
 15 replaced any water lost for a house immediately. There has
 16 only been one in seven years.
 17 Should there be a change in CBM water use, it
 18 should be to increase the surface use, not to diminish it.
 19 Sincerely, Neltje.
 20 I'd like to make just a brief comment. You know,
 21 we've been involved in this for a little over seven years.
 22 I watched it when CBM development started. They started
 23 coming around, and we had every tire kicker and every lease
 24 man trying to get the ranch. And at that time we were
 25 very, very cautious; and Neltje and some of the people in

1 see this development. And so therefore, when we start
 2 this, I want to keep it nice and clean, and I want to keep
 3 this nice so when I go out and lay down in that field we
 4 don't have any problems.
 5 And I said to them -- I says, you know, If you
 6 come in here and you think you're going to destroy some of
 7 the ground like you have in other parts of Wyoming, I will
 8 come to your bedroom or I will come to your kitchen and I
 9 will come through your door and do the same destruction
 10 which you've done to mine -- I says. So once we got that
 11 straight, things -- that was the beginning of our
 12 relations.
 13 When we started developing our water and drilling
 14 our wells, they had a real dickens with me because I had
 15 problems where they were going to drill wells. Because
 16 I -- if I can get on the top of the hill or the side of the
 17 hill and if I can look down and I can see a highway or the
 18 interstate or part of Sheridan, I say we've got to move
 19 this.
 20 90 percent of the time we were able to move them
 21 so it made more effects with the reg and we put the roads
 22 in the proper places.
 23 Some of the other things I've seen around that
 24 community is -- you know, seven or eight years ago you go
 25 out to the hills to the east of Sheridan and there's poor

1 this room -- they know her -- we finally settled with a
 2 very good company, which we thought, and then they got sold
 3 out to another one and another one and another one. And we
 4 ended up with Redstone, and then they sold to Fidelity.
 5 When we started our negotiations, our surface, it
 6 was a long drawn-out affair, because one of the things that
 7 always stuck in my mind is some of the developments that I
 8 seen in the Gillette area when we went and traveled -- we
 9 looked -- was the disregard for the landowner.
 10 A lot of landowners were tricked by a lot of
 11 these lease guys that come in. They -- I feel that some of
 12 this land was leased with other motives, but it --
 13 nevertheless, when the development started there was a lot
 14 of destruction, in which now it's being changed. A lot of
 15 those companies are gone, broke, run out of the country,
 16 which very well needed to be.
 17 But one of the comments that I made to our people
 18 and -- I said, you know -- I said, you know, You look out
 19 into these hills when you're sitting in the main ranch in
 20 the office. You look over here to the east and you look
 21 over here to the south and you look up in that valley. Up
 22 there's -- I says, There's the likes of my bedroom and over
 23 there's my living room and there's my view of the mountain.
 24 And anything that I can see from here from this
 25 road -- up in them hills also the public and the people can

1 people out there that couldn't even rub two nickels in
 2 their pocket. They couldn't bring their kids into town to
 3 get school clothes, to have something decent.
 4 And now you go around and there's people that are
 5 driving new pickups and new cars or buying land or buying
 6 houses. Not only that, they're being able to have money to
 7 send their kids to college when they haven't been able to
 8 have that opportunity before.
 9 Some of these old-time ranchers that I see, they
 10 got money in their pocket, they can come to town, finally
 11 they can buy a necklace or a ring or some flowers for their
 12 wife. Even the romance has gotten better in Sheridan.
 13 But I think one of the greatest things -- I'm for
 14 good economic development. I want to see Sheridan and the
 15 rest of the state really bloom and by -- you know, what we
 16 have is excellent. Let's take care of it.
 17 I do have a heart for the people that have had
 18 problems with some of the companies, and I don't know what
 19 to do about that because we don't really have anybody
 20 downstream on us. We're on the edge of the plain. But one
 21 thing that we're -- we are at is we're where everybody can
 22 see.
 23 And one of the things that I believe that
 24 Fidelity did is help with one of the best developments in
 25 this state, and I wish the rest of the landowners would

1 have that same opportunity.
 2 Thank you very much.
 3 MS. FLITNER: Thank you. Any questions for
 4 Butch?
 5 I might point out that we're reconvening in
 6 Cheyenne on Valentine's Day.
 7 We have a lot of testimony to get through
 8 tomorrow, which will be -- make for a long day for all of
 9 you and for us as well. We're going to get through it. So
 10 far it looks like about 40 people.
 11 I would like to ask you to really consider how
 12 you can help us make a thoughtful decision; so that means
 13 as you make your testimony, specific comments about the
 14 proposed rule is really what's going to help us.
 15 It's going to get a lot longer tomorrow when we
 16 go through four or five times as many folks as we heard
 17 from today. And I believe we're starting off at 9:00 with
 18 a presentation from Jay Shogren.
 19 Our intention is to conclude the hearing by late
 20 afternoon tomorrow. You heard what the options for
 21 decisions were earlier this morning. We'll reiterate them.
 22 Many of you can recite them better than we can by now.
 23 We really appreciate you being here. It's clear
 24 that there is simply no simple approach; and I am committed
 25 to this process, as I know the whole Council has been. I

1 CERTIFICATE
 2
 3 I, ASHLEY DAVIS, Registered Professional
 4 Reporter, do hereby certify that I reported by machine
 5 shorthand the foregoing proceedings contained herein,
 6 constituting a full, true and correct transcript.
 7 Dated this _____ day of _____, 200__.

12 _____
 13 ASHLEY DAVIS
 14 Registered Professional Reporter

1 am starting to feel more confident that, though it has been
 2 a messy and frustrating process, we're hearing -- I'm
 3 sorry -- I broke my phone this morning so I can't turn it
 4 off. I obviously didn't break it well enough -- I do think
 5 we are inching closer to a substantive understanding, a
 6 better analysis of data and I hope some more collaboration.
 7 It is not an easy thing for any of you and
 8 certainly not for us to hear very different perspectives
 9 from neighbors and friends and to know that one action will
 10 benefit one of your neighbors and hurt another.
 11 So we're all in this together; and we're going to
 12 get through it, at least a good part of it, by the end of
 13 tomorrow. And we'll see where things take it from there.
 14 But I appreciate your patience, and the hearing
 15 is adjourned until tomorrow morning at 9:00 a.m.
 16 (Hearing proceedings adjourned
 17 5:10 p.m., January 17, 2007.)
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 19
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 24
 25

EQC Hearing Testimony

January 18, 2007

1 And first off, within that industry, there are
 2 effluent guidelines currently for some six different
 3 categories of oil and gas production. So it's not unheard
 4 of for EPA in setting effluent limit guidelines to
 5 segregate within an industry.
 6 In their review of coalbed methane, they
 7 specifically say, We're considering writing a new effluent
 8 limit guidelines for the coalbed methane industry, we just
 9 aren't doing it yet because we don't have enough
 10 information on how to write that guideline for a nationwide
 11 program.
 12 And in looking at that they point out that
 13 currently in eastern states east of the 98th meridian the
 14 states are using coal mining as their effluent limit
 15 guidelines for coalbed methane, and they're forced to do
 16 that more or less because east of the 98th prime meridian
 17 the oil and gas industry's required not to discharged
 18 produced water.
 19 So I'm saying in my mind that there are a lot of
 20 reasons that it makes to separate coalbed methane from
 21 conventional oil and gas.
 22 I'm just wondering if that kind of background
 23 helps alleviate some of your concern about considering
 24 doing coalbed methane as a separate criteria than
 25 conventional oil and gas, because I think all of us

1 agree -- we recognize that the conventional oil and gas
 2 industry has discharged for decades and people have made
 3 good use of that water.
 4 We also recognize, however, that water both in
 5 volume and quality is different than what we've experienced
 6 in Powder River Basin on coalbed methane produced water.
 7 So I, at least, see a distinct differentiation;
 8 and I think we're on pretty solid ground if we want to
 9 decide to go that route. I'm just wondering if that helps
 10 you.
 11 MS. QUARBERG: It does. I appreciate your
 12 comments, and I'm sure that down the road if you decide to
 13 proceed down this road we're probably going to see if it
 14 will stand the judicial test in court.
 15 I guess from my standpoint, too, I'm a -- even if
 16 you do separate standards, I believe that the possibility
 17 that we're going to develop coalbed methane in Hot Springs
 18 County might be a possibility. We do have coal there.
 19 So there again, I'm still concerned that the
 20 stringents for coalbed methane are going to be so stringent
 21 that we're not going to be able to use that water, which we
 22 already know we can use in our own town and that it's just,
 23 there again, where we might be able to take benefit of some
 24 additional water as well as some additional tax revenue at
 25 the base. I just don't see that it's going to be healthy

1 for us.
 2 MR. MOORE: Thank you.
 3 CHAIRMAN GORDON: Ms. Quarberg, it's nice
 4 to see you again. I really appreciate your comments, as I
 5 said. And, too, I think they're very, very important.
 6 The one thing that I'm -- that I'm reflecting
 7 on -- I feel a little bit like George Bush. When I was
 8 appointed four years ago, the first thing we took up was
 9 Chapter 2 rewrite of these regulations; and at that time
 10 there were several distinct portions of various parts of
 11 the rule that were distilled into Chapter 2. And I was
 12 kind of going back through some of my old materials.
 13 The first draft of that did envision coalbed
 14 methane -- it did envision coalbed methane as a separate
 15 chapter, and then it changed to natural gas. And at the
 16 time I remember that there were distinct differences in
 17 conventional and natural gas types of production, and it
 18 seemed to me that part of the testimony we heard -- it was
 19 a long time ago -- but part of testimony was that there
 20 could be an advantage for the industry in having
 21 differences.
 22 Now, ultimately, of course, they're a blank --
 23 but I only sort of offer that as something to think about
 24 as we go forward. And I want to say I really do appreciate
 25 your comments.

1 MS. QUARBERG: Thank you. And I appreciate
 2 your comments and insight and feedback, and I do appreciate
 3 the time and effort you put into sitting on this board, as
 4 I understand the volunteer part of being on boards and
 5 commissions. So I do appreciate it.
 6 Thank you for your time and kind words. Good
 7 luck.
 8 MS. FLITNER: Thank you.
 9 Let's see, I would like to offer Jim Hillberry
 10 the next spot. You had a conflict.
 11 And I believe that takes care of everyone who --
 12 wait, there was one who had an issue -- if there's someone
 13 here who has another meeting this morning, you will follow
 14 Mr. Hillberry, then we'll proceed with Jay Shogren.
 15 And I believe that takes care of everybody who
 16 had a conflict this morning. I have two who wanted to
 17 testify before lunch. As I said, we'll continue to
 18 accommodate as we can. If everybody wants to go before
 19 lunch, then you'll have to talk fast.
 20 MR. HILLBERRY: Thank you, Madam Chair.
 21 I do have some pictures that I will share with
 22 the board here. The first one I'm passing out is a picture
 23 tour of the environmental quality people on the Grass
 24 Creek, Cottonwood, Hamilton Dome drainage system.
 25 The second group -- I do have several groups of

1 pictures -- and these pictures were taken from our ranch,
2 which is directly north of the Hamilton Dome oil field of
3 which we receive and from two different points, the east
4 side and the west side of the dome -- discharge water
5 program.

6 And then the group of several pictures here is --
7 I'll get into this -- and the 1995 pictures show the
8 production of hay from water from this discharge program
9 that we take out of Cottonwood Creek. The 1999 pictures
10 show cattle grazing on our meadows. Because of the drought
11 from the rangeland we were not able to run our cattle
12 there. We were able to irrigate through rotational,
13 irrigated pastures there.

14 This is a group of 250 head of first-calf
15 heifers. And with that water we were able to sustain those
16 cattle and calves, and the calves came off the heaviest
17 that we've had for a numbers of years -- so just preface
18 that and give you a picture of the benefit of surface
19 discharge water with the present quality standards that's
20 in effect today.

21 And some of my comments will be -- I'll leave
22 out, because Lorraine has adequately discussed those. But
23 the economic impact of this, if the standards are changed,
24 could shut down the Hamilton oil field, which would
25 completely put us out of business, along with 35 other

1 us an adjudicated water right from the surface flow of that
2 water for 6 to 10 cubic feet per second prior to it going
3 into the Cottonwood Creek for recharge.

4 In addition, we have a 250 acre-feet allotment
5 for storage that comes out of that discharge. So that
6 gives you an idea of the magnitude of the concern we have
7 for your changing the policy, if you decide to do that. I
8 highly recommend the petition be denied. We don't need the
9 change.

10 And going back -- we heard yesterday from the
11 professor of the University of Wyoming -- in the early
12 1960s, I was a graduate at the University of Wyoming. I
13 went to work with the University of Nevada at Reno in their
14 agriculture department, and we did a number of studies on
15 selenium toxicity, on saline toxicity in a controlled
16 environment.

17 And they took the levels of that, as you know,
18 from a control group of nothing to the maximum to where
19 they were actually killing the livestock. And then they
20 did some analysis of that and so forth and determined which
21 levels that livestock could maintain their health and
22 viability.

23 In his talk yesterday he left --

24 MS. FLITNER: You have about one minute
25 remaining.

1 ranchers that use that water from the west -- yeah, going
2 east from the west discharge of the Hamilton Dome field.

3 And that encompasses several thousand acres of
4 irrigated ground, and I don't know how many hundred head of
5 livestock, wildlife that's affected by that water if it's
6 required to be put back in the ground.

7 In that one group of pictures from Hamilton Dome
8 field, there's a number of pictures regarding the recovery
9 of the sage grass in that area. And in my mind, a portion
10 of that is due to the water, the development of the
11 meadows, the hay, the grasses that provide the bugs and the
12 other feed for recovery of that sage grass.

13 And with that, I'll go into more -- again, my
14 name is Jim Hillberry. I'm a rancher, owner in the Hot
15 Springs County area there. We have been since 1992. We
16 were very familiar with and good friends with the previous
17 owner who had been there 60-some years, and they had been
18 using this water since the early 1970s. The Hamilton Dome
19 oil field was developed in 1918 and has been producing ever
20 since.

21 And I think if my numbers serve me right, the
22 Dome discharges over 200,000 barrels of water a day of --
23 and an additional 85,000 barrels of water are reinjected
24 into the field there. And with this water right, the state
25 board of control or the state engineer's office have given

1 MR. HILLBERRY: Let's see -- anyway, with
2 that in my studies, we've been conducting since 1992 an
3 experiment on the range at Hamilton Dome. We have never
4 found a problem with toxicity of using this water either
5 for drinking or in the feedstuffs.

6 We have never seen carcasses that we can
7 attribute of wildlife or waterfowl to the use of this
8 water. So -- and we realize this is oil and gas production
9 water, as Lorraine stated. We know there's coalbed methane
10 that's going to come in eventually, and we're concerned
11 that you have different criteria for the coalbed methane
12 that will affect the natural -- and then they'll take the
13 more stringent, and we'll be out of business.

14 That will affect 135 jobs in Hamilton Dome, over
15 28-some million dollars in revenues to that county.

16 And again, really quickly, that's the economic
17 aspect of it. A couple other comments is it was stated
18 yesterday that you had published notice in the Basin
19 Republican newspaper for distribution. That has a very,
20 very limited publication.

21 MS. FLITNER: Thank you. Yes. Please
22 conclude, and I'll invite you back if there's time.

23 MR. HILLBERRY: Okay. My encouragement is
24 to deny this petition, maintain the levels of criteria that
25 have on the discharge and the volumes.

1 MS. FLITNER: Thank you.
 2 MR. HILLBERRY: Thank you.
 3 MR. MORRIS: I have one question.
 4 MS. FLITNER: Go ahead, Mr. Morris.
 5 MR. MORRIS: In your comments you are
 6 viewing this hearing that we're having as shutting down the
 7 oil field?
 8 MR. HILLBERRY: It potentially could with
 9 the change in the criteria for the water quality.
 10 MS. FLITNER: They're having a hard time
 11 hearing you.
 12 MR. HILLBERRY: What I envision happening
 13 is that they change the criteria for the minerals in that
 14 surface discharge water and go to a lesser amount for
 15 coalbed methane, that become merged as one, if we get
 16 coalbed methane in Hot Springs County. And then that would
 17 exceed -- or the current flow would exceed what -- the
 18 standards that they're proposing for coalbed methane.
 19 And it's my understanding if that happens then it
 20 would shut down that -- I've been told that that would shut
 21 down the field because the oil company could not
 22 potentially meet those criteria.
 23 MR. MORRIS: Thank you.
 24 MS. FLITNER: Thank you.
 25 Mr. Brug, is it?

1 MR. BRUG: Madam Chairman, Committee, thank
 2 you for the time. I got some handout material if you want
 3 to send them down the line.
 4 My name is Robert Brug. I'm from Recluse,
 5 Wyoming. I'm on the northeastern part of the Powder River
 6 Basin.
 7 I'd like to just ditto what he said about
 8 livestock use of watering and wildlife and sage grass
 9 habitat. I'm on the northeast group committee for sage
 10 grass.
 11 The stuff that we're passing down through
 12 there -- a couple pictures. I don't take the willy-nilly
 13 approach to what's going on at my place. I generally make
 14 contact with energy companies a year to year and a half in
 15 advance before they ever get on our ranch, and I start
 16 negotiations with them at that time. I don't wait for them
 17 to walk up to my front door.
 18 Fortunately, those individuals or companies that
 19 are in our area would be Sheridan or Gillette, so I don't
 20 have to go to Denver to look anybody up. I go approach
 21 them. I have my own program how I want to handle the
 22 water. There isn't any water that's left my ranch. I
 23 don't intend to have any water leave my ranch.
 24 I'm at the top of the watershed in Bitter Creek,
 25 and I've got -- I guess you call it property rights. I

1 feel that those people that don't want the water, that's a
 2 property right they should deal with. And I'm not going to
 3 infringe on them and have any water leave my place.
 4 I've got an irrigating project, as you see. Last
 5 year it was shut down because of some permitting. It
 6 wasn't quite completed. I got one cutting where you see
 7 the pipe sprinkler system there. That was irrigated once
 8 this spring. The other picture with the hay meadow there
 9 was a fall irrigation unfertilized. So you can see I got
 10 good production off of it.
 11 I look forward to managing the water. I -- that
 12 particular part on the right-hand side of that big picture
 13 opposite of the sprinkler was irrigated last year, and it
 14 was fall irrigated. And that's the reason I got a good
 15 cutting off of it.
 16 The one on the left of the sprinkler system is
 17 off of the green. That has never been irrigated. That
 18 will be irrigated this coming year. It will be seven years
 19 until I get back to the original spot that I irrigated last
 20 year. I don't amend my soil. I don't have to because I
 21 don't just continually pound it with methane water year
 22 after year. And fortunately, I have the area and country
 23 to work with to do it.
 24 So I would like to see the regulations stay as
 25 they are. I've got neighbors sitting here that have a

1 problem, and I don't envy them. They got a lot more water
 2 than I have. They don't have the terrain that I've got to
 3 utilize it the way I do. One solution might be to pipe it
 4 through them if they don't want it.
 5 I can see they've definitely got some issues, but
 6 self-serving interests. I'll speak for myself. I look
 7 forward to using the water, and I appreciate the time you
 8 folks had with me today.
 9 MS. FLITNER: Thank you.
 10 Questions? Thank you.
 11 I believe that gets us to Jay Shogren, and then
 12 we will take up with the rest of the testimony.
 13 My intention was to get those on a tight schedule
 14 out of here, in case some of you wonder about the process.
 15 Jay was scheduled to start at 9:00, and he's starting a
 16 little later, but we appreciate that, Jay.
 17 Go right ahead.
 18 Some may recognize him -- he who used to sit in
 19 one of these chairs, I believe.
 20 DR. SHOGREN: Thanks for having me. Nice
 21 to see you all again.
 22 For many of you out there, I'm at the other end
 23 of the spectrum. You're going to hear a lot of testimony,
 24 very pragmatic, practical stuff.
 25 My job -- I teach at the University, and I think

1 with me, and I apologize.
 2 CHAIRMAN GORDON: Okay. Thank you.
 3 MS. FLITNER: Thank you.
 4 Mrs. Tweedy? And Mrs. Tweedy will be followed by
 5 Margo Sabec, Nicol Kramer and Dan Hengel from Devon. And
 6 I'm not sure if each of you wanted to testify separately,
 7 if you're still here.
 8 Mrs. Tweedy, go ahead.
 9 MS. TWEEDY: Good morning, Madam Chairman,
 10 members of the Committee. Thank you for allowing me to
 11 testify before you again. I have been here before numerous
 12 times, so I will not be redundant in the essence of time.
 13 Yesterday Joel Ohman spoke on my behalf and our
 14 behalf. We live about ten miles apart, so his testimony is
 15 part -- would have been part of my testimony. Having said
 16 that, I rise in opposition to the citizens petition. We
 17 ranch, my husband and I, in Campbell County, south of
 18 Gillette; and we've had coalbed methane development on our
 19 place for eight years.
 20 We manage our water and have managed it well
 21 working with industry in our private domain. We wish
 22 government to stay out of our business. We want to
 23 regulate and negotiate and work with our ranch, our water,
 24 our negotiations in private without any undue regulations.
 25 In our personal case -- and many of my neighbors

1 were here yesterday, having to go home and take care of
 2 their ranches. Some still are with me -- are in the same
 3 boat. In our case, this petition, as I read it, would
 4 impact our ranch in the respect that we could no longer
 5 manage our water like we have been because the restrictions
 6 would be -- the standards would not stand up. They would
 7 be too restrictive, and we could not use the water.
 8 Secondly, in our case, since we've had coalbed
 9 methane for eight years and it's on the decline, we would
 10 have to have our revenue streams turned off, our coalbed
 11 methane wells. That is a large -- a large amount of
 12 taking.
 13 So I stand in opposition to any -- anything that
 14 gives a one size fits all. I recognize there is damages
 15 and people have been damaged. I certainly feel for them,
 16 and I think the court system is probably the place to go.
 17 I don't have all the answers either, but I do not think one
 18 size will fit all of us. We have good water, we use it, we
 19 recognize how to use it, and everything is working well.
 20 Having said that, I speak for the hundreds of
 21 landowners, workers and citizens of Wyoming that are in
 22 opposition to this particular petition, including employees
 23 of oil and gas, ranchers, landowners and citizens and wish
 24 to be entered -- this into record saying, We are the
 25 landowners and people affected every day by the development

1 of coalbed natural gas. We oppose the Environmental
 2 Quality Council's citizens petition and the unfounded
 3 adoption of this amendment to the Wyoming water quality
 4 rules as these changes are an infringement on private
 5 property rights.
 6 They are also unrealistic, and they constitute a
 7 government intervention without just compensation. We
 8 respect the current reasonable water regulations, which
 9 include the wide variety of beneficial uses for coalbed
 10 methane water. We do not support changes to these
 11 regulations. We believe they would intrude upon private
 12 property rights and possibly our own well-being.
 13 We understand the variation in water quality
 14 across the Powder River Basin and Wyoming firsthand. We
 15 can tell you that a blanket rule or one-size-fits-all
 16 solution regulating coalbed methane water will not work.
 17 We will, instead, call for the EQC and other Wyoming
 18 regulatory bodies to utilize the wide variety of water
 19 management techniques that exist and continue to grow.
 20 This approach works best to meet the needs of landowners,
 21 operators and the environment.
 22 This had been signed by hundreds of citizens,
 23 landowners, ranchers; and I will give it to you for it to
 24 go on the record.
 25 And thank you.

1 MS. FLITNER: Wendy has a question or two.
 2 MS. HUTCHINSON: Thank you for coming. I
 3 have some questions specific to your comments about how you
 4 feel that the rule, if we passed it, would impact you
 5 personally in what you're trying to do with the water on
 6 your ranch.
 7 And I was wondering if you could give a specific
 8 example why you think that's going to be, and let me sort
 9 of lead you in and --
 10 MS. TWEEDY: Okay. As I understand it --
 11 and, once again, I'm not a hydrologist or an engineer -- I
 12 understand when the water quality standards, the ECs and
 13 the other things, start becoming more restrictive, my
 14 water, although it meets standards now, to be discharged
 15 into a streambed or into reservoir would no longer meet
 16 that standard.
 17 At that time, if I had coalbed methane in the
 18 first year of our life or the second year of the coalbed
 19 methane's life, that would probably -- industry then would
 20 come in and say, Okay, we will fix that. We will -- we
 21 will inject it, we will do something else with it.
 22 I would not expect industry, after eight years of
 23 production, when my wells are going on the decline to come
 24 in and fix a problem that would not help their bottom line.
 25 It doesn't make sense. We're all business people.

1 But me, personally, would be very much impacted,
2 because I believe the wells would be shut down as well as
3 my neighbors'. We're all in the same boat, about
4 eight years -- and I have been told that as well, because
5 there's not much -- there's not much left of the wells --
6 Two years, maybe three years, and we're finished.

7 MS. HUTCHINSON: I'm just going to ask a
8 clarifying question now.

9 So your main concern is the actual numeric
10 standards that are part of this rule?

11 MS. TWEEDY: My main concern is the
12 petition gives one size fits all. That's my main concern
13 that we're trying to fix 17 petitioners' problems with
14 government intervention and it's going to affect all of us
15 that have had no problem. That is my main concern.

16 I was speaking personally of what it would do to
17 me, personally. I am not here today personally. I am here
18 representing the hundreds of people that have signed this
19 petition opposing the citizens petition. But yes, me,
20 personally, will be impacted tremendously.

21 MS. HUTCHINSON: Okay. Just trying to
22 figure out how.

23 MS. TWEEDY: And I believe it would be nice
24 if it could be tabled, if it could be denied. Let's let
25 the coalbed methane task force finish their job. Their

1 Quality Act and puts it into a rule.

2 And I have been sitting here listening and trying
3 to deem whether or not that will help any of us, whether or
4 not it will hurt any of us to have a rule which says that.
5 And that's what I need testimony on.

6 And I already know -- I already understand that
7 there's a -- we could have had a parade from landowners
8 from Powder River yesterday talking about the failures of
9 the regulatory scheme. What we've been getting the last
10 couple hours is testimony from a group of landowners where
11 it's worked. Okay, I get that. I already get that.

12 But the issue in front of us today is whether or
13 not -- and yesterday -- is whether or not the specific
14 language in Appendix A -- I(a) does us any good. And so if
15 you can offer testimony on that, that would be helpful. If
16 you can offer testimony on whether it's a good idea or an
17 improvident idea to be incorporating language from the
18 statute into a rule, that would be helpful.

19 I'd be glad to sit here until midnight to listen
20 to everyone, but hearing more stories about it's working
21 for me and stories that it's not working for me just aren't
22 getting us anywhere. We are covering the same ground again
23 and again.

24 So I just want to point that out. We're really
25 at the point today -- we're supposed to be deciding whether

1 recommendations don't come in until, what, October 2007?
2 We don't even know what they're thinking yet or what
3 they're going to do.

4 The legislature appointed them. The legislative
5 people asked them to do a job, and I think we ought to
6 listen to see what they have to say first.

7 Do we have all the science? Do we have all the
8 data? I don't think so. We certainly have no problem. We
9 use that water. We have wonderful water, as well as my
10 neighbors.

11 MS. FLITNER: Thank you very much.
12 Are there other questions?

13 MR. BOAL: Let me say something.

14 Folks, I'm willing to sit here until midnight and
15 listen to you, but we are covering the same ground again
16 and again.

17 And, you know, here's what I need help with, and
18 I'm going to tell you so that if any of you want to comment
19 on it you can. You know, we've heard this -- we're not
20 going to pass any constituent limits today or tomorrow or
21 any time in the near future because Powder River has said
22 let's wait.

23 So the question is whether or not the language
24 which is proposed for Appendix 1(a) will do any good, and
25 what 1(a) does is it paraphrases part of the Environmental

1 it makes sense to promulgate this rule, enact this
2 language; and so that's what I'm asking for. If you can
3 give me some help in that regard, fine.

4 I'll continue to listen to people's comments
5 about how things are going good for me and things are not
6 going good for me, but we're kind of past that. And now I
7 need to hear does this particular language move the ball
8 forward? Does it leave it in the same place? Does it move
9 the ball backwards?

10 Thank you.

11 MS. FLITNER: Yes. Wendy, go ahead.

12 MS. HUTCHINSON: I just want to reiterate
13 the same thing that Dennis has said, only with a little
14 more detail.

15 And that is, the way I view the rule right now,
16 especially if we table the changes in the sulfate and TDS
17 levels -- which I don't know that we've committed to do
18 that yet -- but I think there's some merit in waiting for
19 Dr. Raisbeck's study.

20 I would really like to understand how people
21 think this rule's going to be practically applied. And the
22 way I see the rule is -- in the substance of it is that
23 this rule is now asking for credible data that an
24 interested person's going to need to show that the produced
25 discharge water is actually going to be used for ag and

1 petitioners are primarily property right disputes in
 2 private property damage issues.
 3 MS. FLITNER: Wendy has a question.
 4 MS. HUTCHINSON: Okay. You made a comment
 5 that if we eliminate the pollution clause, as I'll call it,
 6 that the rule does not help us. It's already happening
 7 now.
 8 So one of the things that I thought was
 9 different -- and I would like your take on this -- is that
 10 this Appendix is asking for credible data to establish that
 11 the water is actually going to be put to ag or wildlife use
 12 and that -- and again, credible data will be required --
 13 but the quantity of produced water shall not cause or have
 14 potential to cause unacceptable water quality.
 15 Do you believe that is happening today?
 16 MS. KRAMER: And I should have -- I should
 17 have mentioned that, too. I think that the credible data
 18 requirement is overkill for the -- putting to beneficial
 19 use. I think that's difficult to get.
 20 I mean, if you want every rancher to document
 21 where his cows go, document how many wildlife are using the
 22 riparian areas around the pond, that's very difficult to
 23 do.
 24 I think that there is a lot of data being
 25 gathered on these streams. The companies are not doing

1 about what we call regulatory creep is that -- what -- this
 2 is not going to stay in the Powder River Basin. And the
 3 perfect example is the groundwater policy that was
 4 developed, refined in the Powder River Basin and now has
 5 just gone statewide. And so I would ask that that also be
 6 considered. I don't think this is just an issue in the
 7 Powder River Basin.
 8 And then I think to address Mr. Gordon's comment
 9 about the beneficial use letters, my understanding on that
 10 was that it now is just assumed that that will be put to
 11 beneficial use, and that burden was taken away from the
 12 landowners so that they didn't have to come up with a
 13 letter and sign it. It had to be put in with it with this
 14 application.
 15 That's all I have to add. Thank you.
 16 MS. FLITNER: Thank you.
 17 Questions? Thank you very much.
 18 Caroline.
 19 MS. HAMILTON: Thank you for this
 20 opportunity, Madam Chairman and the Board.
 21 I am here to read a letter -- I've been asked to
 22 read a letter from a fellow landowner in Sheridan County
 23 who could not be here, and his name is Tom Colpiska with
 24 the Hat Crew Taro Ranch.
 25 MS. FLITNER: Would you state your name for

1 nothing. They are studying the issues constantly. It's a
 2 consultant string, trust me.
 3 MS. HUTCHINSON: My question is on the
 4 second item on the -- quantity should not cause
 5 unacceptable water quality.
 6 Is that -- is that being addressed under the
 7 watershed permitting at this point?
 8 And someone else can try and answer the question
 9 when they come up.
 10 MS. KRAMER: Well, and I'm not very much
 11 involved in the watershed permitting process, but I do
 12 believe it is. They're looking -- they have effluent
 13 standards that they start with for every watershed.
 14 MS. HUTCHINSON: Thank you.
 15 MS. FLITNER: Thank you, Nicol.
 16 Next up is Dan Hengel, followed by Caroline
 17 Hamilton.
 18 MR. HENGEL: Madam Hearing Examiner,
 19 Council members, thank you for this opportunity today.
 20 I only have a couple points because I'm not near
 21 as eloquent as the two previous speakers, who, I think,
 22 stated their cases very well.
 23 Prior to coming to Devon, I spent three and a
 24 half years with DEQ in the water quality division. I think
 25 the landowners in other parts of the state -- their concern

1 the record.
 2 MS. HAMILTON: Caroline Hamilton.
 3 Gentlemen and ladies, what works for a rancher or
 4 farmer in Sheridan County may not work for a Campbell
 5 County landowner. In the past six years I've had a lot of
 6 experience with the coalbed natural development --
 7 MR. MOORE: Would you slow down just a
 8 little bit for the reporter's sake?
 9 MS. HAMILTON: Okay. In the past six years
 10 I have had a lot of experience with coalbed natural gas
 11 development on my 3500 deeded acres, 500 of which is
 12 irrigated; and I lease 1500 acres from the State of
 13 Wyoming. All development is complete, and I am pleased to
 14 report that it was less disruptive than I had anticipated.
 15 Three companies, Fidelity, J.M. Huber,
 16 Pinnacle-Marathon, are now producing, transporting and
 17 selling CBNG from my land.
 18 Because of the unknown effects of the water being
 19 produced and used on pasture and croplands, originally I
 20 had elected to have all the water removed from my property
 21 to my neighbors' property who were more than willing to put
 22 it to use growing hay for the cattle.
 23 My lands have water rights that date back to 1884
 24 and enough storage or high mountain water to survive almost
 25 any drought condition. My neighbors are now unfortunate

1 and rely heavily on this produced water. Their adjudicated
 2 water rights are about one 1/16th of my water rights, and
 3 they need this produced water to survive.
 4 Having seen how well these three companies manage
 5 their water, I have asked to have the water put to use on
 6 my own land. A 70-acre pivot was erected on pasture of
 7 mine and Pinnacle began putting water on this last summer.
 8 The drought conditions at that time were the worst I had
 9 ever seen in the 30-plus years on this ranch, no rain from
 10 May 15th to September 15th.
 11 This water was a welcome sight and immediately
 12 began to grow green grass. Another issue from the drought
 13 was the lack of salt water. My reservoirs completely
 14 evaporated, and the situation became so serious that it
 15 looked like I would have to sell 50 percent of my
 16 250-cattle herd.
 17 Fidelity, Dan Huber and Pinnacle-Marathon all put
 18 stock tanks in the areas, and that better distributed my
 19 cattle than anything that I had prior to the development.
 20 With these stock tanks in remote locations throughout my
 21 pasture, the grass actually improved because the cattle
 22 were evenly dispersed.
 23 I find that these companies need to be
 24 responsible and reliable in working with landowners in
 25 these important water issues. Please do not place

1 of that because of the limit of time. This would be much
 2 better in a PowerPoint presentation; but, again, with the
 3 limits -- I want you to also know that I am a
 4 rancher-landowner and spent my entire life owning land,
 5 operating land and benefitting from that land. I have no
 6 interest in the development of coalbed methane on my
 7 property nor any potential development of coalbed methane.
 8 I speak to you not for the residents of Sheridan
 9 and Johnson County in the state of Wyoming, but I speak to
 10 you of them; because as you deliberate this rule change,
 11 the impact it could have on revenues to Sheridan County,
 12 Johnson County, other counties in the Powder River Basin
 13 and the state of Wyoming are very significant.
 14 I wish to bring forward to you some charts and
 15 graphs showing you that relativity. I am not going to
 16 address severance taxes. I am not addressing royalties,
 17 though in the original study I did.
 18 If you'll please observe on page 4 the area
 19 graph, Johnson County taxable valuation from the year 2000
 20 to 2006, we have an increase of taxable property of
 21 471 percent that is due to the development of coalbed
 22 methane gas in Johnson County.
 23 In the year 2000, one mill in Johnson County
 24 would generate \$78,000. One mill in 2006 generates
 25 466,000. In Sheridan County we see similarity in this

1 additional restrictions on the way they handle this water.
 2 The country needs the gas, and the landowners appreciate
 3 the water. And we, as fellow landowners, also use the
 4 water and appreciate it.
 5 That's all I have to say.
 6 MS. FLITNER: Thank you very much.
 7 Ken Kerns, you're up next, followed by Joe
 8 Dennis, if he's here. And we heard from Teresa Brown
 9 yesterday; so Ken Kerns, Joe Dennis and then Sheridan or
 10 Lindy Burgess.
 11 Hi, Ken.
 12 MR. KERNS: Good morning. I have some
 13 handouts here.
 14 I thank you for the opportunity to address this
 15 Council. And you have asked previous presenters to have an
 16 opinion or some recommendations, and I do not know if
 17 that's in my purview to do this.
 18 I am an independent consultant. I spent 12 years
 19 as a county commissioner in Sheridan County. I was
 20 contracted by the Coalbed Natural Gas Alliance to generate
 21 information as to the amount of -- not sales tax --
 22 property tax revenues that have been generated in Johnson
 23 County and Sheridan County and to quantify those in the
 24 form of a report. I have done that.
 25 This report to you today is a very brief summary

1 graph. Please notice on the graph that I have broken apart
 2 the residential, agricultural, commercial, local
 3 industrial, state industrial, other minerals in coalbed
 4 natural gas.
 5 These two counties in the comparison of study are
 6 very interesting, because Sheridan County has never been a
 7 producer of minerals, Johnson County has. So when we look
 8 at mineral development in Sheridan County, other than a
 9 little bit of oil that is produced in the extreme
 10 north-central part, 98 percent of that is coalbed natural
 11 gas, a very relative figure.
 12 Yesterday we heard quantity/quality. I can
 13 assure you the quantity of tax revenue is increasing in
 14 Sheridan and Johnson County and the quality must be
 15 excellent because no one rejects it.
 16 I also wish to take and point out to you in page
 17 6 the revenue increase in Johnson County and the revenue
 18 that was generated by the property tax increases. In --
 19 yes?
 20 MS. FLITNER: You have one more minute.
 21 I'm just trying to help you. You've got another minute.
 22 MR. KERNS: Oh, boy. Aren't we glad we
 23 didn't do this in the PowerPoint.
 24 MS. FLITNER: You're doing just fine.
 25 MR. KERNS: You do have all this

1 information, so you can use it for your own purview.
2 But in Johnson County in 2006, the total property
3 tax revenue was \$5 million. In 2006 that had increased to
4 31 million. Likewise, in Sheridan County, it had gone from
5 10 million to 37 million in that same period of time.

6 You can go on into this handout I've given you
7 and review some of the information that is there; and it is
8 very, very pertinent when we see the dramatic benefit of
9 property tax dollars created by the coalbed natural gas
10 development in these two counties.

11 We talk about the nuclear option. Let's not see
12 these charts take a dramatic return and not have the
13 benefit of coalbed natural gas taxation. Let us take --
14 you have an issue before you. I do not think it's in my
15 purview, as I'm working as a consultant; but if you want me
16 to step back from the microphone and step up again as Ken
17 Kerns, ex-county commissioner, I certainly could make a
18 recommendation to you as to what I think you should do.

19 But that being said and without that request, I
20 close and ask for your questions.

21 MS. FLITNER: Questions from the Council
22 for Mr. Kerns?

23 MR. MORRIS: My only comment is why does
24 the Council get the stigma that we're going to shut
25 everything down or eliminate everything?

1 MR. KERNS: Madam Hearing Officer, I don't
2 know if the stigma is there. We do know that if we revert
3 back and -- coalbed methane production because of rules and
4 regulations is diminished or shut down, all of us lose.
5 Everyone in the state of Wyoming would lose.

6 MR. MORRIS: That is certainly not my
7 position on the Council is that we're trying to shut down
8 anything.

9 MR. KERNS: Thank you.

10 MS. FLITNER: Thank you. Thanks for being
11 here. And thank you for offering to go today. He was
12 first up yesterday and ceded his time.

13 Eddie Knudson, and I believe we heard from Robert
14 Brug earlier today. Yeah.

15 Kendall Cox, are you here? Yes, great. And Neal
16 Schumar -- I believe Schumar is on deck.

17 UNIDENTIFIED MAN: Schumar left as well.
18 He's gone.

19 MS. FLITNER: Thank you.

20 MR. COX: Madam Chair, members of the
21 Board, Kendall Cox. I'm from northeast Wyoming. I have a
22 contract pumping business. I do reclamation seeding in
23 CBM. I do noxious-weed control. I represent several
24 ranches in northwest Wyoming along the Powder River.
25 Our drainages along Powder River I represent are

1 the Bitter Creek drainage, Assay Creek drainage, LX Bar
2 Creek drainage, Wild Horse Creek drainage, Gas Draw, which
3 runs into Horse Creek which goes to Little Powder. So
4 we've got a lot of landowners, a lot of drainages that have
5 been in question.

6 I'm not going to bore you with all the stuff.
7 You know we have the fish on the ranch. We use the water
8 for irrigation. It's been a beneficial use to the ranch
9 before we -- the ranch -- Madigalts Ranch is on Assay
10 Creek, LX Bar Creek. It's a yearling operation. There's
11 5,000 head of yearlings we usually run every year. For the
12 drought -- we've cut back every year trying to manage the
13 drought.

14 Before the coalbed methane water, it was looking
15 like we were in bad shape. We cut back to 3500 head. We
16 got the coalbed methane water that year. We put three
17 pounds a day more on our cattle than had ever been put on
18 before. That actually went -- they were outside cattle.
19 They actually went to the feedlot.

20 They've been sold on the futures. It almost
21 broke the cattle buyer, it almost broke the feedlot. The
22 next year they beat down our doors wanting to come in.
23 That was a benefit of our coalbed methane water.

24 We currently have three pivots on the ranch that
25 we're irrigating with, two side rolls on this ranch that we

1 irrigate with. I know Assay Creek has been a sore spot. I
2 think you've heard a lot about it. We are the upstream
3 ranch on Assay Creek. Tooter Rogers and Josephine are
4 below us.

5 Until 2004 we had some control of the water as a
6 landowner on the ranch. In 2004 it became waters of the
7 State. After that ruling come out, it seemed like the
8 gates were opened. We couldn't stop them from running
9 water under the fence over to Tooter Rogers. Tooter Rogers
10 is a downstream water right owner. He didn't want the
11 water coming across his land.

12 We met with the company, Tooter and I did, talked
13 to them about it; and they said, Yeah, that's coalbed water
14 going under there, but that's waters of the State. We
15 can't do anything about it -- turned around, walked off.
16 And I am a country boy, so pardon me, but Tooter and I sat
17 there and kicked horse turds. You know, there was nothing
18 else to do.

19 So Tooter, I think, went on and did what he had
20 to do in court; and I think he still hasn't got it
21 resolved. They did finally want a bypass pipe around his
22 ranch. I would offer that as a solution that anybody that
23 doesn't water coming across their property put a bypass
24 pipe in. Take it around the ranch, dump it below on
25 somebody that does want the water.

1 We try to use all of ours -- we're in the same
 2 area together. You know, we don't want it going under our
 3 fence to bother our neighbors if they don't want it. We
 4 would like to control it ourselves.
 5 Some of the things I see going on -- it seems
 6 like it takes a year, year and a half to get a permit for
 7 DEQ discharge or anything like that. Maybe they need some
 8 more staff. Let's take some of the monies we're making,
 9 give them more staff. Let's give the state engineer's
 10 office more staff -- get them up to speed where they can
 11 actually handle what they're doing without making mistakes
 12 like we heard about yesterday.
 13 I think that's kind of it. If you've got any
 14 questions on these watersheds, give me a shout. I'm full
 15 of BS.
 16 MS. FLITNER: Thank you very much.
 17 Any questions? Thank you, Mr. Cox.
 18 Eric Hiser, I believe that's you. And you were
 19 going to wait?
 20 MR. HISER: Yes.
 21 MS. FLITNER: Okay. Carol Jones. Is Carol
 22 here?
 23 I'm sorry. Some of this is illegible, but it
 24 looks like someone Yetter from Meeteetse Conservation
 25 District.

1 devastating economic and environmental effect on our
 2 operations. Not only would it take productive hay land out
 3 of production, but also create shortages of stock and
 4 wildlife water.
 5 The surface discharge water from the Hamilton
 6 Dome field not only provides irrigation and stock water for
 7 all of lower Cottonwood, but also maintains a life stream
 8 that provides habitat for aquatic and many other types of
 9 wildlife, including deer, antelope, sage grouse, chukar,
 10 partridge, et cetera.
 11 With this active year-round flow of water, a
 12 valuable riparian area is maintained for the full length of
 13 the creek. Therefore, this petition should be denied as it
 14 has been proven on the ground that the quality of water
 15 currently discharged supports the aforementioned
 16 environment. A change in discharge water quality standards
 17 would make it uneconomical to operate and continue this
 18 source of badly needed water. To lose this source of water
 19 would be unacceptable.
 20 The PRBRC petition should be denied due to the
 21 destruction of many long-term ranching families' lives.
 22 These ranchers contribute to the community, provide for
 23 their families and care for the land. In addition to the
 24 devastation created by this destruction to those of us
 25 directly involved, there will be a tremendous negative

1 MS. YETTER: Yetter with a "Y."
 2 MS. FLITNER: Thank you.
 3 Go right ahead. Welcome.
 4 MS. JONES: Thank you very much.
 5 My name is Carol Jones. I am from Hot Springs
 6 County, and I am presenting a letter from the Prospect Land
 7 and Cattle Company, and it is from D. Hillberry. You heard
 8 from his brother Jim earlier. Again, this letter is from
 9 D. Hillberry.
 10 Dear Sir, my name is D.J. Hillberry, a fourth
 11 generation rancher in Hot Springs County, Wyoming; and I
 12 recommend strongly that the petition submitted by the
 13 Powder River Basin Resource Council be denied due to the
 14 negative impact on my ranching operation, the environment,
 15 including riparian areas, wildlife, et cetera, and, most
 16 importantly, the socioeconomic impacts on Hot Springs
 17 County.
 18 My ranch is located on Cottonwood Creek and is
 19 highly dependent on surface discharge water from Merit
 20 Energy at the Hamilton Dome field. We use 4 to 6 cfs of
 21 irrigation -- for irrigation purposes during the growing
 22 season and use the water for stock water purposes the
 23 remainder of the year.
 24 Inasmuch as Cottonwood Creek would be dry most of
 25 the year without the discharged water, it would have a

1 impact on the total economic structure of the county of Hot
 2 Springs. Schools will be impacted and services will be
 3 affected to an unrecoverable state.
 4 In conclusion, I would suggest that if there is a
 5 specific problem in the Powder River Basin concerning CBM
 6 discharged water in terms of quantity and quality, it
 7 should be addressed as such and the water discharge quality
 8 standards that exist today for oil and gas producers not be
 9 changed.
 10 These water quality standards have proven to be
 11 proper and appropriate for the quantities and quality of
 12 water being discharged. This has been proven on the ground
 13 and can be readily observed on Cottonwood Creek.
 14 Once again, I submit that the PRBRC petition to
 15 amend Wyoming Water Quality Rule, Chapter 2, Appendix H be
 16 denied. In addition, I would strongly urge that the
 17 existing verbiage in Chapter 1, Section 20 of the
 18 Agricultural Use Protection Policy be retained. There is
 19 no need to change a policy that has worked well for
 20 decades.
 21 Thank you for this opportunity, signed D.J.
 22 Hillberry.
 23 MS. FLITNER: Thank you.
 24 MS. JONES: I would like to say on my own
 25 personal behalf -- I live near these people. They are my

1 friends and my neighbor. This does not affect me
 2 personally or directly, but it would if this affects them
 3 and they go out of business.
 4 As you heard yesterday and from Lorraine Quarberg
 5 this morning and from other speakers, this would be
 6 absolutely devastating. It would be the nuclear attack on
 7 Hot Springs County. And I know that most of you don't
 8 appreciate that to the extent that those of us that live
 9 there do, but it is near and dear to our hearts. It's the
 10 lifeblood of our community.
 11 MS. FLITNER: Thank you. Thank you for
 12 making the trip.
 13 Mrs. Yetter is next up, followed by Marvin
 14 Blakesley and Renee Valentine.
 15 MS. YETTER: Clara Yetter. I'm here today
 16 with two hats, my own personal one and as supervisor for
 17 the Meeteetse Conservation District, which I'll refer to
 18 MCD.
 19 I have two letters that I'd like to put into the
 20 record. My own personal comments -- I am very, very
 21 familiar with the law of unintended consequences. In the
 22 '70s we had rules and policies that affected us in a very
 23 negative way, and that is my comment there.
 24 I have a letter from Pete and Darlene Scrips in
 25 regard to their need for the water produced in the Half

1 Moon Field. Incidentally, I have lived in this state my
 2 entire life, which is almost 76 years. I've seen a lot
 3 happen.
 4 To whom it may concern, regarding the release of
 5 water from the oil fields directly concerns us as beef
 6 producers. Our cattle depend on the water coming from the
 7 Sulfur Creek, which comes from the Half Moon oil field out
 8 of Cody, Wyoming. Water out here is not plentiful and
 9 without this stream we could not raise our cattle.
 10 There are more far-reaching effects than just our
 11 cattle being dependent on this particular water. This is
 12 the deer, elk, antelope and various other kinds of
 13 wildlife. This is the only water available to sustain
 14 these creatures. So to stop releasing this water would be
 15 detrimental in so many ways.
 16 Whenever we have had any question regarding the
 17 water's quality, all we have to do is call the oil company
 18 and they immediately test the water; and if there is
 19 adjustment needed, they take it.
 20 Thank you for listening, as this is extremely
 21 important to us and our way of life and our income.
 22 Pete and Darlene, 241 Half Moon Road, Cody,
 23 Wyoming.
 24 And I will enter that.
 25 And then as supervisor and chairman of Meeteetse

1 Conservation District, I have comments from our MCD, who
 2 was directed to write these by the board of supervisors.
 3 Re: Petition for rule-making, district board of
 4 supervisors representing the citizens that elected it --
 5 and I will not read the enabling legislation, which is
 6 attached -- this petition should be killed immediately
 7 following the January 2007 hearing. This petition is an
 8 unwise attempt to create a statewide rule in response to a
 9 local situation.
 10 The petitioner's own exhibits and the comments
 11 that the petitioners have solicited in its support clearly
 12 document that local soil/water interaction, not statewide
 13 conditions, control whether or not damage from discharged
 14 water occurs or may occur from the notice of proposed
 15 rule-making before the Environmental Quality Council by the
 16 Environmental Quality Council. And there is a website.
 17 This is a quote: A new Appendix I will contain
 18 requirements applicable to produced water discharges from
 19 CBM with more stringent limits on discharges that cause or
 20 have the potential to cause unacceptable water quality and
 21 would limit the pollution caused by such discharges.
 22 Appendix I would also contain more stringent
 23 limits for sulfate, TDSSC and the barium. This rule
 24 revision is being proposed to provide for regulation of the
 25 unique environmental issues presented by CBM-produced

1 waters. And that's the end of quote.
 2 Yet, the petitioners' own exhibits show that
 3 proposed limits on certain constituents are unrealistically
 4 low.
 5 Example with excerpt from Exhibit 19: Sulfate
 6 imparts this quote. Sulfate imparts a bitter taste to the
 7 water, but animals can acclimate to it. Levels up to 1500
 8 ppm produce slight effects on livestock and levels of 1500
 9 to 2500 produce temporary diarrhea.
 10 Petition for rule-making filed by the Powder
 11 River Basin Resource Council: It is absurd to consider
 12 regulating discharge from a source labeled 'coalbed natural
 13 gas, coalbed methane or CBM' any differently than discharge
 14 from a source labeled 'traditional oil and gas facilities.'
 15 In the Big Horn Basin, water quality that would
 16 be unsuitable for discharge under the proposed Appendix I
 17 is currently being discharged by industry and is being used
 18 by agriculture. This discharged water is so valuable that
 19 agricultural producers file with the state engineer's
 20 office in order to obtain adjudicated water rights on the
 21 discharged water.
 22 Respectfully submitted for the Meeteetse
 23 Conservation District, Board of Supervisors, Steve Jones,
 24 Resource Manager Coordinator, Meeteetse Conservation
 25 District. That is the first one.

1 And I will read just the beginning of the second
 2 one, and then I will introduce them.
 3 Re: Petition for rule-making filed by the Powder
 4 River Basin Resource Council. Dear EQC, the Meeteetse
 5 Conservation District Board of Supervisors, MCD,
 6 representing the citizens that elected it -- and then an
 7 asterisk with the enabling legislation -- hereby further
 8 registers its opposition to the cited petition. This
 9 petition is an unwise attempt to create a statewide,
 10 one-size-fits-all rule in response to a local situation.
 11 This petition should be killed immediately
 12 following the January 2007 hearing. The MCD presents the
 13 following comments which are particularly relevant to your
 14 action on this petition. These comments are similar to
 15 some of those filed with the Wyoming DEQ, WDEQ and Wyoming
 16 Water Quality Division -- sorry -- the Department of
 17 Agriculture regarding the Chapter 1, Section 20
 18 Agricultural Use Protection Policy.
 19 These comments are derived from those which were
 20 developed at a properly noticed public meeting convened by
 21 the Hot Springs Conservation District.
 22 The EQC must follow Wyoming Statute 35-11-302
 23 requiring the State to consider and evaluate the economic
 24 impacts of any proposed rule or regulation.
 25 35-11-302, Administrator's Authority to Recommend

1 Standards, Rules, Regulations or Permits. The
 2 administrator, after receiving public comments and after
 3 consultation with the advisory board, shall recommend to
 4 the directors rules, regulations, standards and permit
 5 systems to promote the purposes of this act.
 6 Such rules, regulations, standards and permit
 7 systems shall prescribe -- in recommending any standards,
 8 rules, regulations or permits. The administrator and the
 9 advisory board shall consider all the facts and
 10 circumstances bearing upon the reasonableness of the
 11 pollution involved, including --
 12 MS. FLITNER: I'm going to ask you -- we're
 13 over the time allotted. Do you mind finishing? You can
 14 certainly enter those into the record.
 15 Did you have anything else you wanted to add?
 16 MS. YETTER: No, I will enter these in the
 17 record, and that should be sufficient.
 18 Thank you so much for the opportunity.
 19 MS. FLITNER: Thank you so much for making
 20 the trip. We appreciate it.
 21 Ranae, would you -- would you like to go now or
 22 after Mr. Blakesley?
 23 MS. VALENTINE: I would like to go now, if
 24 that's okay.
 25 MR. BLAKESLEY: I would defer my comments.

1 MS. FLITNER: I had you pegged for a polite
 2 man.
 3 Ranae Valentine and extremely well-behaved
 4 children.
 5 MS. VALENTINE: I just have a couple
 6 comments.
 7 My name is Ranae Valentine. I'm here to
 8 represent Lyman Ranch Company. We have four places
 9 around -- outside Thermopolis around Black Mountain, and we
 10 run -- can run over a thousand head there, but there's no
 11 surface water without the surface water discharge. And so
 12 our -- we wouldn't be able to run cows three out of four
 13 seasons, at least.
 14 So especially with the many, many, many years of
 15 drought that -- we're really dependent on it. And as far
 16 as quality, we've never had any problems. Our cows drink
 17 it, the antelope -- or the elk and deer drink it. And we
 18 just really rely upon that.
 19 And that's all I came to say. So thank you.
 20 MS. FLITNER: Thank you.
 21 Questions? Thank you.
 22 Marvin Blakesley. Thanks for your flexibility.
 23 MR. BLAKESLEY: Madam Chairman and members
 24 of the Council, thank you for the opportunity to comment.
 25 My name is Marvin Blakesley, and I represent

1 Marathon Oil Company.
 2 I won't take any of your time talking about all
 3 the beneficial uses of this water in the Big Horn Basin
 4 across Wyoming. You've heard it multiple times. We know
 5 it's very important.
 6 I'm not an attorney, so I just want to express to
 7 you our concern as a company that, by some way, shape or
 8 form, the proposed changes to the effluent limits could end
 9 up on conventional discharges. And if the current proposed
 10 limits were adopted, I can tell you it would take away
 11 100 percent of Marathon's surface water discharges of
 12 produced water.
 13 I also want to submit that if there are any
 14 reduction in the current effluent limits across the board,
 15 be it coalbed methane or conventional, there will be a loss
 16 of water on the landscape.
 17 It concerns me -- I appreciate the DEQ's effort
 18 to hire Mr. Raisbeck and for him to do the study on the
 19 effects of the current effluent limits on stock water and
 20 quality. My concern is that this study will be
 21 ultraconservative. It will reflect feedlot conditions. It
 22 may not reflect actual on-the-ground circumstances in
 23 Wyoming.
 24 As we heard yesterday during the Geomega
 25 testimony and Mr. McCarty and Mr. Flitner, they have used

1 water at the current effluent limits very successfully, and
2 people have used these for decades. And I request that
3 should there be a lowering of the standards that both the
4 DEQ and the EQC look at current Appendix H and Appendix I,
5 which provides provision of Appendix (c)(i), which states
6 for existing permits for the original permit application --
7 was submitted prior to September 5, 1978, Modification of
8 the effluent limits described to paragraphs (b)(vii) of the
9 Appendix may be granted on a case-by-case basis if a signed
10 letter of beneficial use from the landowner was provided
11 specifically requesting the discharge in question be
12 allowed to continue or a signed statement of the Wyoming
13 Game and Fish Department was provided in which it was
14 stated that the discharge in question is of value to fish
15 and wildlife.

16 I won't go on and on. You can read the rest of
17 it. I think this is a very important provision to maintain
18 in both Appendix H and Appendix I because should there be a
19 lowering of the effluent limits, there's still a mechanism
20 here for those folks who want the water, have demonstrated
21 the beneficial use of this water for decades and continue
22 this use.

23 And I think that's very important, and I'd like
24 to focus your attention on both of those provisions in the
25 Appendix. I think that does provide some solution.

1 I also want to speak to you, not as an employee
2 of Marathon Oil Company, but as a sportsman of Wyoming. I
3 was born and raised in Thermopolis, I grew up around the
4 discharges, I've hunted around them all my life; and that's
5 because that's where the wildlife was at, that's where the
6 game is at.

7 If this water's removed from the landscape, it
8 would be an ecological disaster and an economic injustice
9 to the citizens of Wyoming.

10 And I thank you for the opportunity to comment.
11 I know you're in a difficult situation. I sympathize with
12 the folks who have problems. I think those problems can
13 and should be addressed on a case-by-case basis. I don't
14 think broad-sweeping, statewide rule changes are the avenue
15 for this.

16 I submit and I challenge and I encourage those
17 landowners with problems and those operators who've
18 operated on their properties to sit down at the table, talk
19 about the problems and see how they can be fixed on a
20 case-by-case basis.

21 And don't penalize the rest of the state of
22 Wyoming and all the benefits that come from this water for
23 some instances that surely there must be a resolution to.

24 Thank you.

25 MS. FLITNER: Thank you.

1 Can you hold on a second? We have a question
2 from Wendy.

3 MS. HUTCHINSON: What is your position with
4 Marathon?

5 MR. BLAKESLEY: I'm an HES professional.

6 MS. HUTCHINSON: So do you do some of this
7 program?

8 MR. BLAKESLEY: I do. I have been in
9 charge of the NPS program for Marathon Oil for ten years.

10 MS. HUTCHINSON: Can you tell me if these
11 rules are passed that are going to require you to provide
12 credible data that the water's actually put to agricultural
13 use -- can you make any comment about whether or not you
14 think you would be capable of trying to come up with that
15 sort of --

16 MR. BLAKESLEY: It depends on what that
17 credible data is. You know, we have decades of documented
18 and demonstrated beneficial use. If you go back many
19 years, we were always required to get a beneficial use
20 letter from the landowner. We've never had a problem with
21 that.

22 All the folks up there in the Big Horn Basin want
23 the water. The Game and Fish supports us very strongly.
24 Both the Cody Bureau of Land Management and the Worland
25 Bureau of Land Management strongly support this water on

1 the landscape. It's very important for many public lands.
2 So it depends on what you mean by "credible data."

3 We would have no problem providing evidence of
4 beneficial use. I do know that.

5 MS. HUTCHINSON: Well, the credible data
6 requires that you use referenced lab and field methods from
7 qualified personnel and that you have a quality assurance
8 plan.

9 MR. BLAKESLEY: That causes us problems.

10 MS. HUTCHINSON: That's what we need to
11 know.

12 Thank you.

13 MS. FLITNER: Thank you.

14 Anybody else? Thank you, Mr. Blakesley.

15 Faye Mackey, followed by Steve Jones.

16 MS. MACKEY: Madam Chairman, members of the
17 committee, I'm Faye Mackey. I'm a rancher on the east fork
18 of Wild Horse Creek in Campbell County. I'm going to
19 submit some pictures into the record.

20 And having heard discussions for two days, I'm
21 going to submit my speech into the record; but I'm just
22 going to talk to you.

23 Is that okay? Thank you.

24 I've sat for a couple of days, as well as you
25 have, and listened to the testimony. And Mr. Boal says

1 it's repetitive, and it is; but I want to address,
 2 specifically, as you have asked, the Appendix A of credible
 3 data.
 4 Who's to say it's credible? I oppose this
 5 petition, the citizens petition, as it is presented. I am
 6 these people's neighbors; Jo and Tooter Rogers, Ken
 7 Clabaugh -- Eric Barlow is to the west of me, Bill Maycock
 8 is to the west of me. I am these people's neighbors, so I
 9 have personal, kind of, invested comments here.
 10 I wonder why the Powder River Basin Resource
 11 Council got involved. Maybe it was because these people
 12 didn't feel like they had any other recourse. I don't know
 13 all the proceedings that you guys have went through with
 14 the Rogers and the Clabaughs and -- but I do know I have
 15 driven a school bus for 29 years -- drove up and down that
 16 creek four times a day picking up kids.
 17 You have not been told the truth, the whole
 18 truth, so help you God, the truth; and I implore this
 19 committee to do a little road trip, to do a little
 20 investigation yourself.
 21 Talk to the neighbors that are upstream,
 22 downstream. Kendall Cox -- his testimony about him and
 23 Tooter Rogers sitting there, what do we do now -- typical
 24 story. These are my neighbors. They have been injured,
 25 and I don't dispute that they have been injured; but

1 MS. FLITNER: Yes.
 2 MS. MACKEY: I suggest that after you do
 3 your little road trip, take your cameras, take your own
 4 pictures, interview the neighbors, go to your room in a
 5 closed station with the landowner and the person that is
 6 dumping the water on these landowners, leave the lawyers at
 7 the door, close the door; and you will come out with a
 8 solution.
 9 Thank you.
 10 CHAIRMAN GORDON: I just -- you brought up a
 11 really good point. I just wanted to say that we did ask
 12 for the opportunity to go visit some of the properties that
 13 were involved, and it was -- I guess there's a -- Governor
 14 Herschler had a recommendation that the attorney general
 15 advised us that we really shouldn't do that.
 16 I'm not sure why that is, but our advice was that
 17 we shouldn't take a road trip, so --
 18 MS. MACKEY: Well, I think you should,
 19 because I think you should need to see for yourself. It is
 20 incredible that the people upstream put up hay, cut hay and
 21 there's one injured party. And I'm not saying that they're
 22 not injured, they are; but there needs to be a solution for
 23 that one injured party.
 24 This petition, as it stands -- I'm supposed to
 25 produce credible -- how does that say, credible data? Who

1 there's a solution other than having a petition brought on
 2 by the Powder River Basin Resource Council that does
 3 nothing more than to wish to litigate every drop of water
 4 that comes out of the discharge permit.
 5 This is not my first time in the room with the
 6 Powder River Basin Resource Council, and I am not in favor
 7 of this petition whatsoever. It does nothing but puts a
 8 stranglehold on the industry, and it does and it will shut
 9 off the coalbed methane. And you have heard repetition
 10 from many people that tells you of the effect that it is
 11 going to have on their property, their revenues, their
 12 communities. And yes, it will put a stranglehold on the
 13 industry.
 14 I'm a landowner. I have several wells, several
 15 reservoirs on my property. I have found that if I have
 16 worked with the industry hand-in-hand, asked for my wish
 17 list, worked with them, negotiated, they have provided me
 18 with the tools that I need to improve my ranch for the next
 19 generation.
 20 Thank you.
 21 MS. FLITNER: Well done. That was
 22 before --
 23 MS. MACKEY: And I would like to make one
 24 suggestion.
 25 May I make a suggestion?

1 is going to say that that data is credible? What's good
 2 for me is not good for Jo and Tooter Rogers. I know Jo and
 3 Tooter Rogers. Tooter Rogers is not going to lie to you.
 4 He says he's got a water problem, he's got a water problem.
 5 But this petition, as it stands, does nothing
 6 more than puts a strangle, which is its intent, on
 7 industry; and we don't need to be regulated any more.
 8 MS. FLITNER: Thank you very much.
 9 Other questions? Thank you, Faye.
 10 Steve Jones.
 11 MR. JONES: Madam Chair, I'm going to defer
 12 my comments until this afternoon.
 13 MS. FLITNER: Thank you.
 14 I believe Kathy Mariarty is from Torrington and
 15 left yesterday; is that correct?
 16 Ken Hamilton? I think I saw you. Hi, Ken.
 17 MR. HAMILTON: Thank you, Madam Chairman,
 18 rest of the committee members.
 19 My name is Ken Hamilton. I represent the Wyoming
 20 Farm Bureau Federation. Last year at this time,
 21 approximately, we had a prehearing, I guess, on this
 22 petition. Wyoming Farm Bureau Federation submitted for the
 23 record testimony. I would ask that you folks review that;
 24 because even though the initial proposal has changed
 25 somewhat, I believe the comments that the Wyoming Farm

1 Bureau Federation made at that time are still pertinent to
2 the petition as presented and is before you.

3 I won't go into what we said back then. I do
4 want to say a few things relative to the amendments that
5 are -- that were proposed in Appendix I. I still feel that
6 the -- that the use of credible data in this instance,
7 tying it back to Wyoming's credible data law, is
8 inappropriate and would not fit or apply here.

9 Having said that, I'm assuming that's what the
10 term "credible data" would refer back to. Yesterday the
11 admonition was if you have some solutions, let's bring them
12 forward. And towards that end, I would like to ask for the
13 Council's indulgence.

14 The industries that are involved in coalbed
15 methane and a bunch of agricultural groups got together to
16 try and come up with a mechanism to hopefully get not just
17 the landowners that have development on their land, but
18 those offsite landowners -- give them a structured process,
19 if you will, to try and address the problems that the
20 coalbed methane waters are creating outside of a regulatory
21 setting and hopefully outside of a legal setting.

22 So towards that end, we've had two or three
23 meetings to come up with some proposed language, if you
24 will, to try and get involved in the process. These
25 landowners downstream, down on the -- offsite, whatever you

1 Hemmer at that time, the director of the division -- or the
2 Department of Environmental Quality -- sorry -- and would
3 have been just that, to the state engineer. And that
4 was -- and, again, rescinded; and I didn't know -- were you
5 aware of that? Do you remember that -- can you tell me the
6 issues that --

7 MR. HAMILTON: Yes, somewhat. You know,
8 that has been several years ago; and at that time, as I
9 recall, the memorandum of understanding went -- before the
10 state engineer issued any water permits, they would get, if
11 I remember right, the input or the okay, if you will, from
12 the Department of Environmental Quality.

13 And in that memorandum -- and at the time, I
14 think Wyoming Farm Bureau Federation submitted a letter
15 saying that we felt that would be improper that the
16 Department of Environmental Quality would have veto
17 authority over the issuance of a water permit.

18 If an irrigator wanted to apply for a water
19 permit and the Department of Environmental Quality didn't
20 feel it was appropriate, I felt that was outside of the
21 scope of the Department of Environmental Quality. I guess
22 I would say that I still do.

23 CHAIRMAN GORDON: Okay. Thank you.

24 MS. FLITNER: Wendy.

25 MS. HUTCHINSON: There was an effort made

1 want to call it -- get them involved in the process before,
2 as was mentioned earlier, the attorney got into the room
3 and perhaps even guys like me and ask that those producers
4 and landowners sit down, utilize, if necessary, the ag
5 mediation board that we currently have in place in Wyoming.

6 And so we've been working on this initiative, and
7 it's specifically targeted towards the Powder River Basin,
8 because we feel that the issues involved in that particular
9 location would be different than if we have some of these
10 other areas. And as coalbed methane development and
11 perhaps other development gets going in some of these other
12 areas, we probably will amend it and try and come up with
13 some sort of an issue for that.

14 So with your indulgence, I'd like to just submit
15 to the record this draft preliminary document. I think
16 that it would go towards addressing some of these problems.
17 Maybe if we had been a little bit smarter, we would have
18 got this thing going five years ago and you folks wouldn't
19 have to sit through this.

20 But that's all I have, Madam Chairman, and ask if
21 there's any questions.

22 MS. FLITNER: Mark.

23 CHAIRMAN GORDON: I have one question.

24 Can you refresh for my memory -- it seems to me
25 there was a memorandum of understanding which maybe Dennis

1 five years ago on this mediation issue, and I recall being
2 in the public meeting in Gillette with several members from
3 the industry. And I recall them being there for sure
4 talking about mediation efforts and the mechanism for
5 landowners to get with oil companies and for that to --
6 that mediation to be free to those landowners.

7 So my question is this effort that sounds like
8 it's being kicked off now, how is that different from the
9 effort of five years ago?

10 MR. HAMILTON: Madam Chairman, actually, I
11 think at that time -- if it's the same one that I'm
12 thinking of -- it dealt with split estate issues. And as a
13 template for this, we did rely on that. And as far as I
14 know, that initiative is still ongoing.

15 MS. HUTCHINSON: Okay.

16 MR. HAMILTON: And I think -- I couldn't
17 say for sure -- I think there's been a limited use of that;
18 but in those instances where it has been used, it has been
19 very successful. And I think that that is part of the
20 reason why we decided we needed to try and adapt that to
21 this type of process.

22 MS. FLITNER: Thank you.

23 Any other questions?

24 We're pressing up against the lunch hour. If I
25 could use a couple of minutes before we adjourn so you can

1 get something to eat, I'd like to get an idea of how many
2 people who signed up to testify are still here, and that
3 will let us gauge our time this afternoon.

4 If you will, just yell out when -- I'm sorry, I'm
5 going to use the sheet because I need to know who's not
6 here, if that's okay. So just say yes if I call your name
7 and you're still planning to testify.

8 David Gremel?

9 MR. GREMEL: Yes, ma'am.

10 MS. FLITNER: Tom Harriet?

11 MR. HARRIET: Yes.

12 MS. FLITNER: Marge West?

13 MS. WEST: Yes.

14 MS. FLITNER: Lorri Lutterman? Anita
15 Schumar? Rori Renner?

16 MS. RENNER: Yes.

17 MS. FLITNER: And Rori Renner again?

18 MS. RENNER: I'll just combine them.

19 MS. FLITNER: Oh, I thought it was a
20 mistake, but now I see why.

21 Kelly Graham?

22 MS. GRAHAM: Yes.

23 MS. FLITNER: Richard May?

24 MR. MAY: Yes.

25 MS. FLITNER: Troy Mathews? James Mankin?

1 Michelle Barlow? Eric Barlow?
2 I'm not clear as to whether you -- either of
3 you --

4 MR. BARLOW: Yes.

5 MS. FLITNER: Yes to Eric?

6 MR. BARLOW: Please.

7 MS. FLITNER: Tim French?

8 MR. FRENCH: Yes.

9 MS. FLITNER: Tim French?

10 MR. FRENCH: Yes.

11 MS. FLITNER: Duane Siler?

12 MR. SILER: Yes.

13 MS. FLITNER: Steve, Eric and Kate?

14 Yes? Okay.

15 Is there anybody who wishes to testify whose
16 name --

17 MR. BURRON: Keith Burron.

18 MS. FLITNER: Keith, hi. I can't believe
19 it.

20 Is there anybody else whose name I didn't call?

21 Thank you. I'll make sure I have you on this
22 list, and we'll check the door as well.

23 Wendy has a comment.

24 MS. HUTCHINSON: I would like more comment
25 on the issue of credible evidence both from the industry

1 and from the petitioners on if the rule does get passed as
2 you had proposed it; and I'd like comment from the DEQ as
3 well, Mr. Corra -- how has the credible evidence -- in the
4 water quality rules is only being used for use
5 attainability analysis and how does -- or how would that
6 apply if someone wanted to apply this Appendix I as it has
7 been proposed?

8 So I would like comment about the feasibility of
9 coming up with credible evidence to answer item i and item
10 ii in the proposed rule on -- that the water's actually put
11 to such use and that the quantity won't have problems
12 with -- cause problems with water quality.

13 So that's the way the rule's reading right now,
14 and I would like comment on practicality and how that's
15 going to be applied or how it could be applied from both
16 industry, petitioners and DEQ.

17 So you can ponder that at lunch time, and I'd
18 sure appreciate comments on it.

19 MR. MOORE: Just a point of correction,
20 it's credible data, not evidence.

21 MS. FOX: Madam Chair, I have a scheduling
22 issue while you're planning all this.

23 Larry Munn -- this afternoon between 2:00 and
24 2:30, he and Ginger Paige will be here.

25 MS. FLITNER: And how long are they --

1 MS. FOX: You know, they're primarily here
2 to answer any questions the Council have. They may give a
3 brief presentation, but I'm thinking ten minutes.

4 MS. FLITNER: Okay. Thank you. I will
5 recess this hearing until 1:00 sharp.

6 Thank you very much.

7 (Hearing proceedings recessed
8 11:51 a.m. to 1:00 p.m.)

9 MS. FLITNER: Welcome back, everybody. We
10 are going to -- I believe Tom Harriet wanted to make a
11 quick statement -- who's on our list.

12 And is he back?

13 MR. HARRIET: Yes.

14 MS. FLITNER: Okay. Why don't you go ahead
15 and kick us off. And we have the state engineer's office
16 here. We're going to ask you to -- I think the Council
17 just has a few questions, and I understand you're juggling
18 a legislative schedule, too; so we'll call you next.

19 MR. HARRIET: Madam Chairman, thank you,
20 Council. My name is Tom Harriet, landowner, Powder River;
21 and my family's been there -- been on the Powder for about
22 nine years, so we're an old family.

23 I will not speak about the beneficial uses, just
24 because I'm with the Joanne Tweedy group, and you've heard
25 all of that testimony. So I won't regurgitate all of that

1 information.
 2 But anyway, I'd like to add to the testimony of
 3 Faye Mackey. She wanted me to read a little statement
 4 here. And it says that, I want to thank the opportunity to
 5 provide comment. I'm hear to speak not only for my
 6 ranch --
 7 MS. FLITNER: Excuse me, would you speak
 8 into the microphone?
 9 And she did testify. I'm not sure if that's the
 10 same letter.
 11 MR. HARRIET: Yes, it is; but she wanted me
 12 to reiterate the acreage that's on the map. There's
 13 581,250 acres, and they represent the landowners of -- that
 14 are opposed to the petition.
 15 MS. FLITNER: Okay.
 16 MR. HARRIET: And I just -- that was all I
 17 had on that.
 18 MS. FLITNER: Thank you. I appreciate it.
 19 MR. HARRIET: And I have one more comment.
 20 We're a surface owner and a mineral owner, and we
 21 have development. And this -- this petition -- I worry
 22 that it will affect the development of our other minerals.
 23 They're on different parts of our land. It's not -- all
 24 our properties are developed, so -- and I just -- the --
 25 it's nice to get that mailbox money come in once in a

1 while. It helps make you a smart rancher, so I just wanted
 2 to say that.
 3 Any questions?
 4 MR. MORRIS: Yeah.
 5 Does a landowner with production look at these
 6 things maybe a little differently than the landowners
 7 without production?
 8 MR. HARRIET: No, I don't believe that. I
 9 think -- you know, my family's been on that property --
 10 MR. MORRIS: You're talking about the
 11 mailbox money, and I thought --
 12 MR. HARRIET: Yeah. Well, it's nice, and
 13 it helps ranching. That's a very good asset. We own the
 14 minerals underneath, and we should be able to extract them
 15 if we like, you know.
 16 And this is -- you know, and I just don't agree
 17 with the petition. I think we have enough regulation on
 18 hand as we do. I think the DEQ, the BLM -- I think
 19 everyone does a pretty good job with what they're dealing
 20 with; and more rules and regulations, I don't think, are
 21 going to help accomplish anything.
 22 MS. FLITNER: Thank you.
 23 We'd like to take the opportunity, Pat, as I
 24 said, to hear from you.
 25 And I -- we -- the Council just wanted to take

1 advantage of having some informal remarks, I guess. You
 2 are going to be on the record, but we didn't prepare you in
 3 any way. I know there are a couple of questions. If you
 4 have any remarks you'd like to start out with, you're
 5 welcome to.
 6 MR. TYRRELL: Thank you, Madam Hearing
 7 Officer and members of the Council. I am here today,
 8 understanding even sitting at the Herschler Building
 9 occasionally your ears burn when these issues come up and
 10 feeling that it might be worthwhile to be here and answer
 11 questions and try and clarify issues that come up related
 12 to my office.
 13 We were, yesterday, in front of Senate Minerals
 14 Committee talking about another side of this issue, which
 15 is the Senate File 55, dealing with the Council and Mr.
 16 Corra and the question of water quantity.
 17 And the language or the testimony I presented
 18 yesterday is -- there is some recognition that, while at a
 19 high level, the state engineer is the quantity guy in the
 20 state of Wyoming and at a high level Mr. Corra and the
 21 Council are quality folks.
 22 That really -- that particular bill, and in some
 23 extent, this issue deals with discharge; and I don't permit
 24 discharges. The state engineer's office does not, for
 25 example, for the City of Cheyenne, tell them how much water

1 in quantity terms, even, to discharge from their publicly
 2 owned treatment works; nor do we tell an industry how much
 3 to discharge nor do we tell a rancher how much return flow
 4 to come off his field or from his pivot. In fact, it's his
 5 choice as to how to irrigate once he gets that beneficial
 6 use permit from us.
 7 So to the extent that you're dealing with this,
 8 it is partly because of my statutory inability to regulate
 9 the discharge of water quantity after the beneficial use
 10 has been made; but we do certainly control and permit the
 11 first use side.
 12 In answering questions about the general nature
 13 of this petition in the past, my response, sometimes more
 14 briefly than other times, is that when we get a permit
 15 application and we don't go to that applicant and say, Show
 16 us how you're using the return flow from this use and we
 17 need to see what you're doing there before we grant the
 18 first permit. It's not a practice of ours.
 19 So clarifying a little bit further, some remarks
 20 I heard earlier today about the beneficial use of this
 21 water -- we certainly encourage and we see the beneficial
 22 use of a lot of water produced from wells and out of
 23 reservoirs that got there as a result of this industry.
 24 We view it, however, not necessary, even though
 25 it's waters of the State, because groundwater and surface

1 suggestions when you're talking about credible data.
 2 Do you have -- I want to make sure that we are
 3 understanding the same thing you're intending.
 4 MS. WEST: I do mean the numeric standards.
 5 I also mean the standards for SAR and EC. We have 2 ICP
 6 points on our ranch. Those standards have never one time
 7 been met.
 8 MS. FLITNER: Thank you.
 9 Wendy has a question.
 10 MS. HUTCHINSON: This is kind of along the
 11 same lines as Sara.
 12 You did comment that you felt that if this
 13 requirement for credible data had been in effect that you
 14 would not have been damaged --
 15 MS. WEST: Right. And --
 16 MS. HUTCHINSON: Let me ask my question
 17 now.
 18 And that is, what do you imagine that credible
 19 data to look like?
 20 MS. WEST: Well, I would imagine that it
 21 would be data that proves this water is not harmful to
 22 downstream vegetation, it won't destroy your hay meadows,
 23 it's not going to flood our fields, freeze over during the
 24 winter for three and a half to four months, kill all our
 25 old-stand cottonwood trees.

1 You know, they did send it down the channel
 2 right, but Spotted Horse Creek has an ephemeral drainage.
 3 It had no channels in place. They've sent the water down
 4 anyway, and it spread out and froze over for a period of
 5 three and a half to four months -- and they say, Not our
 6 problem.
 7 MS. HUTCHINSON: Okay. I think you
 8 answered my question.
 9 Thank you.
 10 MS. FLITNER: Thanks, Marge.
 11 Rori Renner? Following Rori is Kelly Graham.
 12 MS. RENNER: I would like to thank the
 13 Council for hearing our testimony here today. And in
 14 interest of time, I'm just going to submit my written
 15 comments, and I'll just make a few comments here.
 16 I would like to ask the Council to deny this
 17 petition. We are from the Big Horn Basin, and we benefit
 18 greatly from produced water. As a matter of fact, we would
 19 like more produced water in our area. It's very beneficial
 20 to us, not only from a livestock-watering scenario, but
 21 also from hay meadows and those types of things. So we
 22 appreciate it.
 23 I would also like to request that a hearing be
 24 held closer to our area, whether it be Gillette or
 25 Meeteetse or Cody or someplace up in that area. I would

1 suggest that.
 2 Thank you.
 3 MS. FLITNER: Thank you.
 4 Questions? Thank you.
 5 Kelly Graham? Following Kelly is Richard May.
 6 MS. GRAHAM: My name is Kelly Graham, and
 7 I'm representing Larson Ranch of Meeteetse.
 8 Ladies and gentlemen, my family owns a commercial
 9 cow/calf operation near Meeteetse. I am the fourth
 10 generation of the family to devote my life to cattle
 11 ranching. Larson Ranch is situated primarily in Park
 12 County but also extends into Hot Springs County.
 13 We currently employ five full-time people, pay a
 14 significant amount of money in property taxes and
 15 contribute in multiple ways to our local economy. The
 16 cattle we have produced are our sole source of income.
 17 Larson Ranch has been blessed with produced water
 18 discharge from a traditional oil facility for more than
 19 40 years. This water has been invaluable to us in many
 20 ways. The discharge water allows us to utilize forage that
 21 would otherwise be unavailable due to lack of water.
 22 In one of our key pastures, the discharge water
 23 is the only water available. This discharge water flows
 24 into Gooseberry Creek where Larson Ranch and many of our
 25 downstream neighbors benefit from the water.

1 Because of the addition of the discharge water to
 2 Gooseberry Creek, we are able to irrigate our hay meadows
 3 more often and more thoroughly. Our water right is not
 4 very early, and without the additional water provided by
 5 the discharge, most years we would not be able to irrigate
 6 at all.
 7 The discharge water has also proven beneficial in
 8 fighting wildfires. In August 2000 lightning sparked a
 9 wildfire that raged out of control for several days and
 10 burned up several thousand acres. The helicopters that
 11 were used to make aerial water drops were able to fill
 12 their buckets in the beaver ponds fed by the discharge
 13 water.
 14 The discharge water is extremely beneficial to a
 15 wide variety of wildlife. Everything from elk and moose to
 16 wolves and ducks benefit from this water. Gooseberry Creek
 17 has a very healthy riparian habitat due to the discharge
 18 water. We have an abundance of desirable trees and shrubs
 19 such as cottonwood, birch, willow and silver leaf.
 20 I am opposed to the proposed changes to the
 21 existing Chapter 2 rules. The proposed reduction of
 22 effluent limits found in existing DEQ standards would
 23 effectively halt the discharge of any produced water. This
 24 would severely hinder the operation of Larson Ranch.
 25 We would suffer an immediate drop in weaning

1 weights on our calves. Due to the increased influences,
2 they would have to travel to water. We would be limited in
3 our ability to utilize several of our pastures, and it
4 certainly would put an end to any irrigated meadows.

5 It would be very difficult to replace the
6 discharge water in a cost-effective manner. Well drilling
7 is extremely expensive, and there is no realistic way to
8 haul or pipe water from another location. The effects on
9 the wildlife and the riparian habitat would be devastating
10 as well.

11 In the event that we're unable to continue our
12 ranching operations due to lack of water and we were forced
13 to sell out, the land values would be considerably less.
14 Before making the proposed changes to the rules that would
15 negatively impact many ranches and large numbers of
16 wildlife, I request that you demand scientific data and
17 carefully consider all of the options.

18 If there are legitimate problems with a few
19 landowners, perhaps those situations should be dealt with
20 on a case-by-case basis rather than implementing
21 comprehensive changes that would be detrimental to many.

22 Thank you for your consideration of my concerns.
23 And I have a written copy that does include a few pictures
24 that I would like to submit.

25 MS. FLITNER: Thank you.

1 MR. MAY: Madam Chairwoman, Council, thank
2 you. I'll submit a few pictures.

3 Like many people you've heard before, I'm also a
4 rancher -- little bit different than the typical. I raise
5 buffalo -- I'm the buffalo guy you need.

6 Both of the previous people who were here
7 actually benefit from the discharge of the pumping units on
8 our ranch. The pictures that I've passed through actually
9 are showing the beaver ponds, that type of situation which
10 comes from our land down to theirs.

11 I've been kind of changing my little speech and
12 everything, listening to everybody. What I'm actually very
13 concerned about is if you change the effluent limits to a
14 tighter end -- what I'm worried about -- it will affect
15 ranchers such as myself and other people, which will also
16 affect the culture that we -- have been a part of Wyoming
17 for the last hundred or so years.

18 Our family ranch has been in business for 112
19 years in Park County. Now, you don't see a lot of that
20 anymore. And in the cultural aspects, which seems like a
21 far cry from why does this have anything to do with
22 produced water -- but it does affect it, and it also
23 affects the oil companies which have also become a part of
24 our culture. And I would like you all to consider that,
25 please.

1 Questions?

2 MR. MORRIS: Are you indicating that if
3 these were approved that you would no longer ever get any
4 water?

5 MS. GRAHAM: Well, right now we -- as I
6 said, our water is with the traditional production; but I'm
7 like some of the other folks that spoke earlier today, and
8 my concern is that when -- if this issue comes up at court,
9 I think we're going to be stuck with these lower standards;
10 and then I don't think we're going to have the produced
11 water. That's my fear, and that's why I'm here.

12 MR. MORRIS: Do you have anything that
13 would really substantiate your thinking there that you'd
14 never get any more water if the lower --

15 MS. GRAHAM: Well, I'm not a lawyer or
16 scientist, but I know how the court system works. And I
17 know a lot of times it doesn't come out in our favor, so
18 I'm very concerned about it.

19 MR. MORRIS: Thank you.

20 MS. FLITNER: Thank you.

21 Richard May? And then is Joe Olson here?

22 MS. FOX: Can I interrupt for just a
23 second?

24 I understand that whenever you're ready,
25 Mr. Munn and Ginger Paige are here.

1 Also, in the fact of raising buffalo, if
2 Dr. Raisbeck would like to contact me, I can work out a
3 situation with him where he can do some testing; and I'd be
4 more than happy to do that.

5 Thank you.

6 MS. HUTCHINSON: If you would make sure
7 that I have your contact information, we'll make that
8 happen.

9 MR. MAY: I sure can.

10 I want to thank you all very much for your time,
11 and I hope this works out in everyone's benefit.

12 Thank you.

13 MS. FLITNER: Thank you.

14 Joe, you -- did you want to say --

15 MR. OLSON: I'll decline.

16 MS. FLITNER: Thank you.

17 At this point -- let's see, I know that you had
18 hoped to get Ginger to speak about 2:00. And do I
19 understand both are here?

20 MS. FOX: Both Dr. Munn and Ginger Paige
21 are here. And really it's at the Council's convenience.

22 And I know there are other witnesses, but I wanted you to
23 know they're available when you want them.

24 MS. FLITNER: I -- that's terrific. And I
25 would like to take at least a few more of the citizens at

1 MR. JONES: I think sometimes that's a
2 problem; and I think, you know, therefore you're going to
3 have to take a look at what is basically the normal flow in
4 the stream, say, during the spring, something like that,
5 and use some sort of portionality with regard to that.

6 That's what I would suggest.

7 MS. FLITNER: Rick.

8 MR. MOORE: Thank you.

9 Mr. Jones, you were about to give us some
10 citation on distinctions between oil and gas and coalbed
11 methane when you were running out of time.

12 Do you care to elaborate on what you were going
13 to say about why we can regulate one different --

14 MR. JONES: Well, one of the things I was
15 going to point out was that back when 40 CFR, part 435 --
16 that's a regulation that's been in effect a long time, I
17 think since back in the 1970s or 1980s -- when they put
18 that into effect, the only requirement that you'll see in
19 there for discharge is an oil and grease limitation; and
20 there's nothing else.

21 And so it's quite clear that, you know, all they
22 had in mind there was discharges from conventional oil and
23 gas produced water. But I think -- I don't have any
24 citations for you beyond that. But as you stated,
25 Mr. Moore, there's plenty of different types of categories

1 some water stock tanks for me, and they've done a very good
2 job of putting in an irrigation system for me. I had the
3 first drip system that had ever been established in this
4 part of the world, to the best of my knowledge. It's
5 working very well. I've been very happy with it.

6 I'm sure that there are others that haven't had
7 as good experience as I've had with the methane people, but
8 I believe the answer to their problem lies in some other
9 area rather than having more stringent regulations opposed
10 on a statewide basis.

11 Any damage done by a methane company, I think,
12 leaves a person that's being damaged with several options
13 that they can pursue to arrive at a solution without going
14 to a regulatory change.

15 However, if your intention, in fact, is to
16 curtail methane production or eliminate it altogether, then
17 you definitely would want to go the route of a change in
18 the regulations and make them more stringent.

19 If it can be proven that any good can come from
20 this regulation, then I think pass -- it would be worth
21 passing. But I have not seen any proof in the two days
22 I've been here or in the study I've done on the subject
23 that it would be any beneficial effect by approving these
24 changes. So I would urge you not to do so.

25 Thank you, Madam Chairman and members of the

1 of pollutants that they look at. And for each one of the
2 categories, they come up with different effluent limitation
3 guidelines.

4 So I think the precedence is well established
5 that you can distinguish between types of pollutants that
6 come up with different guidelines for those pollutants.

7 MR. MOORE: Thank you.

8 MS. FLITNER: Thank you.

9 Carlton?

10 And Kate, as we're nearing the -- you may see how
11 you want to use the time and whether -- I know you had
12 asked to be one of the last commenters, as have Keith and
13 Eric.

14 So I just -- I want you to decide when you want
15 to use your time and how that may affect your scheduling
16 with Larry and Ginger. And I'll give you the opportunity
17 to think about that while we hear from Carlton.

18 MR. PERRY: Madam Chairman, members of the
19 Council, my name is Carlton Perry. I'm a rancher from
20 Sheridan County. I have coalbed methane production on the
21 ranch. I'm afraid that I'm one of those ranchers you're
22 going to hear from that's had very good relations with the
23 minerals company.

24 They've been very good for me personally, been
25 very good for the production of the ranch. They put in

1 Council, and I was brief. And I am not a lady.

2 MS. FLITNER: Thank you very much.

3 Questions for Carlton? Appreciate it.

4 MS. FLITNER: Kate.

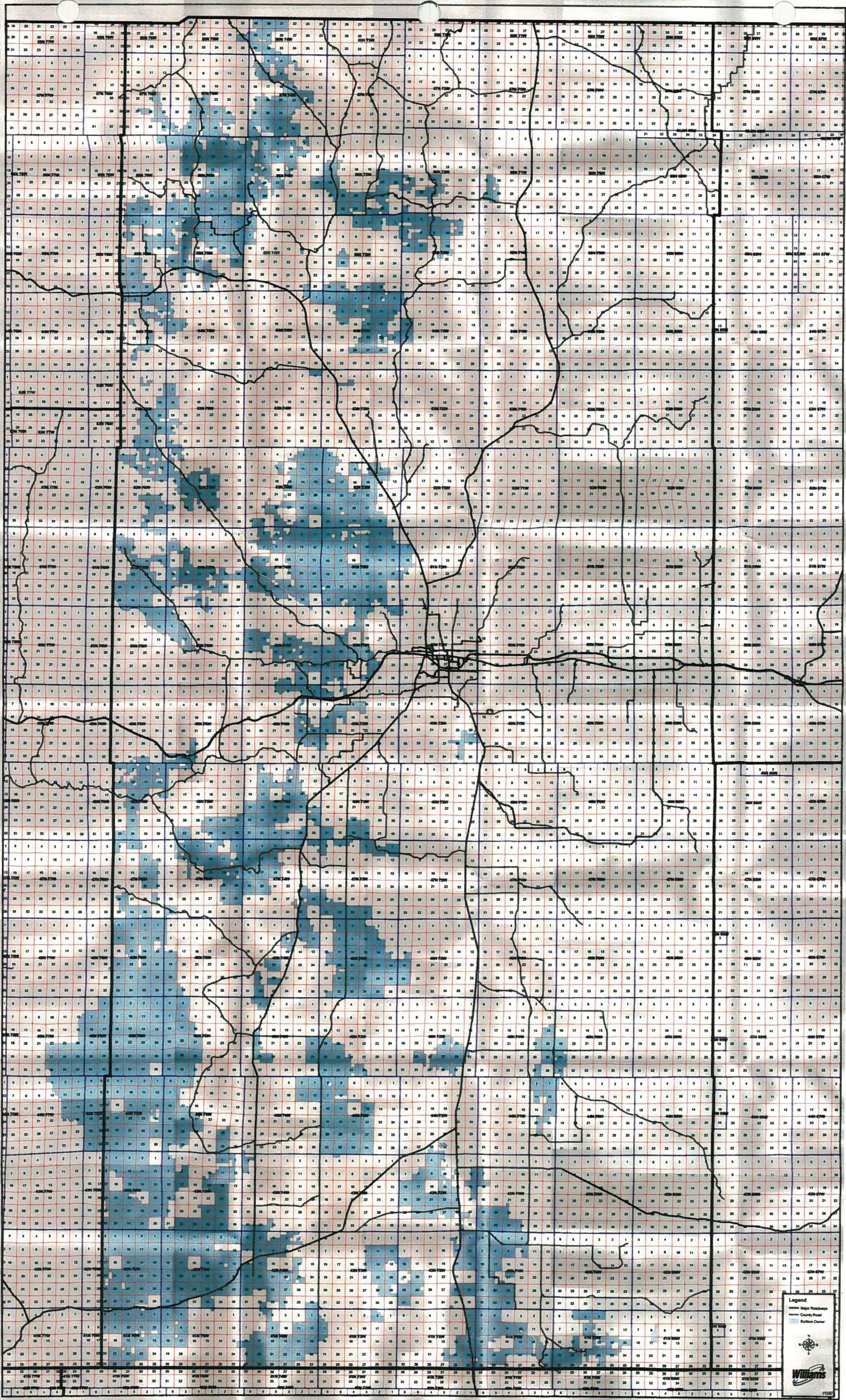
5 MS. FOX: Thank you, Madam Chairman. I
6 just spoke with Eric Keiser, who would like to speak before
7 he has to leave -- about the same schedule you have.

8 My suggestion is that we have Larry Munn and
9 Ginger Paige up now primarily to answer the Council's
10 questions. And so that length of their testimony will
11 depend on you.

12 Then I know Keith, Eric and one other industry
13 lawyer wanted to -- are there three or just two -- two,
14 okay. Then those two, and then I'd like to close.

15 MS. FLITNER: That doesn't sound like
16 something that's feasible in the next 32 minutes, so you
17 may decide amongst yourself or I will decide for you; and I
18 don't mind either way. But if it's something that's easy
19 for you guys to work out, that's fine.

20 There are several who have indicated they are --
21 we're considering as public testimony, and everyone will be
22 given the opportunity, as I said. I'm -- I know -- I just
23 want to be transparent about my departure, and I'm not
24 intending to inconvenience you; but I'm trying to let you
25 use the time as you see fit.



Legend

- Major Roadway
- County Road
- Surface Owner

Williams

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