



Wyoming Outdoor Council

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Terri A. Lorenzon, Director
Environmental Quality Council

July 26, 2008

RE: Appendix H, Agricultural Use Protection Policy
Comments by Wyoming Outdoor Council and Western Watersheds Project

Dear Mr. Waterstreet:

Wyoming Outdoor Council and Western Watersheds Project hereby submit their joint comments on the proposed new Appendix H of Chapter 1, Water Quality Rules and Regulations.

The path of this proposed regulation has been torturous, to say the least. The Water and Waste Advisory Board did not like the DEQ recommendations in the Agricultural Use Protection Policy and recommended different, and more lax, standards be used as part of the policy. The Environmental Quality Council (EQC) held a hearing in February of 2007 and did not particularly object to any provisions of the DEQ policy at that time, but nevertheless the EQC regarding whether the procedural requirements of the Environmental Quality Act had been followed. The EQC therefore asked the DEQ to present the policy to the Water and Waste Advisory Board for further consideration. This policy is now back before the Environmental Quality Council for consideration -- to be adopted as a rule.

However, another important thing has occurred since this Agricultural Use Protection Policy was before the EQC. A four-day hearing took place on the Willow Creek and Pumpkin Creek Watershed General Permits in April, 2008. The permits were challenged by both Wyoming Outdoor Council and by Marathon Oil Co., Yates Petroleum, and Citation Oil and Gas. The DEQ should have taken the ruling of the EQC into account before it want to public notice on the Agricultural Use Protection Policy (Appendix H), but it chose not to do so. It is odd because, the DEQ has continually said that they need direction from the EQC as to how to proceed with many policy matters -- particularly with regard to coal bed methane issues. Yet, when they get that direction, they prefer to ignore it.

On June 24, 2008, the Environmental Quality Council (EQC) ruled in favor of the Wyoming Outdoor Council on many issues raised in the appeal of the two general permits for Willow Creek and Pumpkin Creek, in the Powder River Basin, regarding the discharge of coal bed methane produced water. The Department of Environmental

Quality (DEQ) was required to amend these two general permits -- the first of their kind in Wyoming -- to conform to the ruling of the EQC. Also contesting the case were coal bed methane industry operators who had leases in the Willow Creek and Pumpkin Creek watersheds: Marathon Oil, Yates Petroleum, and Citation Oil and Gas. The industry petitioners lost on most of their claims.

With regard to the effluent limits, the EQC decided that more water quality protection was needed for the agricultural uses of these two watersheds. Specifically, for anywhere alfalfa was being grown and irrigated, and upstream of such locations, the water quality of the produced water had to be of sufficient quality to allow for the production of alfalfa. This was determined to be 1330 for EC (electrical conductivity -- a salt measurement) and 7 for SAR (sodium adsorption ratio -- a ratio of sodium to chloride and magnesium in the water). These two constituents are critical for allowing sustainable plant growth, without negatively affecting soil quality. (This confirmed the effluent limits that the DEQ had set for areas that are being irrigated for alfalfa.) For areas where alfalfa was not being grown, the EC levels were set at 2200, and SAR at 10 -- those numbers were judged by the EQC to be sufficient to allow for the sustainable growth of meadow grass and other native grasses, which the EQC found were present throughout each drainage.

Thus, eliminated were the limits set by DEQ for all non-irrigated lands of 7500 for EC and no limit whatsoever for SAR, which did not protect any native grasses, plants, or plant crops. The DEQ had set these limits for EC and SAR only to protect livestock and wildlife that might be ingesting the CBM produced water as drinking water. The EQC decision thus recognizes the importance of native grasses to ranchers as an agricultural use, as forage for livestock, which ranchers depend upon for their livelihoods.

This decision by the EQC thus goes beyond the current Agricultural Use Protection Policy that the DEQ has been following recently. In that policy, the DEQ now only recognizes areas of streams that support native grasses that are at least 20 acres in aerial extent (or nearly contiguous areas that total at least 20 acres) and 50 feet wide, adjacent to a stream. Below that 20 acre / 50 foot threshold, the DEQ does not require discharge limits for EC and SAR necessary to protect native grasses. But the EQC has now gone beyond that policy and has required that all of the watersheds for both Willow and Pumpkin Creek, which were found to contain native grasses and riparian areas, must be protected so that the water quality of the CBM produced water is sufficient to protect those native grasses. The 20 acre / 50 foot threshold was eliminated in favor of this broader protection. The drainages of Willow Creek and Pumpkin Creek were thus protected for native grasses -- without regard to this 20-acre threshold requirement -- from the headwaters to the mouth of each creek.

Just as important was the elimination of the option that DEQ had put into the general permits of allowing the CBM industry to build in-channel 50 year / 24 hour reservoirs and (if built) discharge CBM water of a lower quality into those on-channel reservoirs. (That lower quality was 7500 for EC and no limit for SAR.) The EQC eliminated this option on the ground that it appeared to them to be ill-advised to allow

water of such low quality to be discharged directly into the drainage (i. e. on channel), considering the threat such poor water posed to crops and native grasses that may be grown in those drainages. The EQC decided to eliminate those reservoirs as an option for the CBM industry to take advantage of, saying that it was too risky to allow such poor quality water to be placed directly into the drainages. This makes sense since these reservoirs are not lined and water from these reservoirs could easily seep into the drainages without any precipitation event occurring. We point this out here only to emphasize how seriously the EQC takes the issue of protection for native grasses and agricultural crops grown in these intermittent and ephemeral drainages of the Powder River Basin.

The Wyoming Outdoor Council and Western Watersheds believe that these areas should be protected for the most sensitive crop that can be grown in the area. This is alfalfa. As EQC member John Morris stated in the Willow Creek / Pumpkin Creek hearing, "It is well known that alfalfa can be grown through out the powder River Basin." That being the case, the EQC should therefore protect all streams in the Powder River Basin at a limit of 1330 for EC and 7 for SAR. These areas can support alfalfa. Often, the only thing preventing alfalfa from being cultivated in most of the basin's intermittent and ephemeral stream drainages is the question of whether enough water can be diverted to alfalfa crops. But with the advent of CBM discharge water upon these streams, this quantity of the water will not be an issue. Only the quality of the water will be an issue. But why should industry be allowed to avoid an obligation to put good quality water down the streams of these drainages? With natural gas prices at \$9.00 per mcf at the Cheyenne hub, and climbing, industry can afford to develop coal bed methane the right way. It must treat the water if necessary, and discharge only if that water can be beneficially used for such crops as alfalfa. The Wyoming Outdoor Council advocates that all streams in Wyoming be protected for the raising of alfalfa, and this means discharges should be required to meet a maximum effluent limit of 1330 for EC and 7 for SAR.

At a minimum, however, Wyoming Outdoor Council and Western Watersheds Project ask that the EQC at least follow the precedent it has already set with it's ruling on the Willow Creek and Pumpkin Creek Watershed General Permits. The DEQ's Agricultural Use Protection Policy should, at a minimum, reflect the outcome of this case, and recognize that bottomlands, riparian areas, and native grasses deserve protection, and the water quality effluent limits need to be set accordingly.

The idea that a 50-foot width, or a 20-acre threshold limit, should be arbitrarily imposed upon the protection of native grasses is not tenable. The better approach is to set effluent limits that will be protective of all native grasses that grow in riparian areas. Most streams in Wyoming have riparian areas that support native grasses. Frequently these riparian areas are found close to the mouth of the streams, where they flow into larger rivers, such as the Powder River. Therefore, the entire length of most Class 3 (intermittent and ephemeral streams) as well as Class 2 streams, will need protection for riparian areas throughout their entire length. Basically, this means that all streams should have a protection level of 2200 for EC and 10 for SAR. This should be the

maximum level of allowed discharge effluent under the Agricultural Use Protection Policy.

The DEQ has been playing fast and loose with its obligation to protect native grasses and riparian areas, which are crucial to ranchers as agricultural resources that must be nurtured, protected and preserved. The DEQ has, for too long, ignored its obligation to protect such lands and the ecology that they support. The DEQ's decision to protect only those areas that are at least 20 acres in size and 50 feet in width, is indicative of DEQ's reluctance to do its job and protect Wyoming's water quality. Almost all streams are likely to have riparian areas. Only the narrow slot canyons and deep ravines will escape or avoid such characteristics. The Agricultural Use Protection Policy should recognize this dominant condition and protect the water quality of all rivers and streams for native grasses, if not alfalfa.

This is now, finally, an important opportunity to for the EQC, as the rulemaking body for the DEQ, not to rubber-stamp the rule as proposed by the DEQ. Rather the EQC should address this matter squarely and take the necessary action to protect Wyoming's native grasses and bottomlands -- which are a substantial component of agricultural uses in this state -- from the devastation that can be caused by allowing discharge water that is too saline and too sodic for native grasses to survive. The EQC needs to make it clear to the DEQ that it is their duty to protect native grasses from produced water from CBM discharges, and the policy and the effluent limits needs to be set accordingly for all receiving streams.

Thank you for this opportunity to comment.



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