JOHNSON COUNTY COMMISSIONERS

Gerald E. Fink Chairman | Delbert Eitel, Vice | Smokey Wildeman

September 23, 2009

FILED
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Jim Ruby, Executive Secretary
Environmental Quality Council

Mr. Dennis Boal, Chair
Environmental Quality Council
Herschler Building, Room 1714
122 W. 25th Street
Cheyenne, WY 82002
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RE: EQC Docket O8-3101
WQD Chapter 1, Appendix H
Section 20 Rules, Agricultural Water Supply

Dear Chairman Boal,

The Johnson County Commissioners are pleased to have the opportunity to comment on the proposed Water Quality Division Chapter 1, Appendix H rule which is being considered by the Council.

The County Commissioners believe changes to the current rule will have significant economic impacts to the citizens of Johnson County, livestock producers, local governments and gas and oil producers. Moreover, because a 'measurable decrease' attributed to the presence of produced water has never been found – we question the need for changes in the current rule at all.
In our comment we are asking the EQC to keep the current livestock watering standards, remand the irrigation portion back to the Water and Waste Advisory Board and to determine the socio-economic impacts these proposed rules might cause.

Livestock Drinking Water Standards – reasons not to change current standards

Rangelands in Johnson County are relatively arid. Efficient distribution of produced water helps maintain stable livestock numbers and efficient utilization of range land forage by providing livestock water to areas not otherwise utilized due to a lack of livestock water. Water distribution on these rangelands also serves to enhance wildlife populations. Historically, water of marginal quality has been used successfully to serve this need. Marginal quality water is better than no water at all. Raising the standard of quality for livestock water will be seriously detrimental to this industry.

Because this net decrease in agricultural production could cause sweeping economic impacts to our County and negatively impact all the livestock and farming operations within its borders, we side with the numerous comments you received in the past. Johnson County is asking you to please keep the numeric livestock drinking water standards unchanged at 5,000 mg/l TDS, 3,000 mg/l sulfate and 2,000 mg/l chloride. These standards have worked well and there has never been a 'measurable decrease' noted, therefore changes are not warranted.

Irrigation Section of the Rule – reasons to remand back to WWAB

Produced water has been used in the present and could be in the future, to develop irrigation projects that enhance the production of forage for livestock; however applying a California alfalfa standard to the water quality criteria will prohibit such use. It must be noted that significant yields of alfalfa have been grown using produced water from gas and oil wells. There are also many other forage crops with a higher tolerance for salts and other water borne minerals that can be grown using produced water. Raising the standard for water quality will take away the flexibility of livestock producers and landowners to use the water to supplement feed supplies. Raising the standard could jeopardize production, period, meaning landowners will not have water to supplement feed supplies.

Because the Irrigation Section of the Policy could also be detrimental, we ask that your Council remand the Irrigation Section of the policy back to the Department of Environmental Quality and the Water and Waste Advisory Board. More time is needed to construct a more meaningful and applicable policy. Additionally, Drs. Hendrickx and Buchanan determined that the Tier II Irrigation option was 'scientifically indefensible', but the experts never introduced a better alternative. Because this is such a drastic change, further review of the changes by the WWAB is necessary.

Since the proposed Rule defines "irrigation" as including water flowing in a channel through "naturally irrigated lands" or bottomlands, the "irrigation" standards would apply to virtually all discharges of produced water in the state. The Experts' Report also assumes that the places where irrigation water will be used receive water regularly and this is not the case the majority of the time. In the ephemeral tributaries that this rule targets, "irrigation" occurs quite infrequently, with large enough flows only able to irrigate a few times per year and some years, not at all. Johnson County asks the Council to develop a more accurate definition for "irrigation" to reflect these statements.

Reasons to complete a socio-economic impact and analyses study

It is our understanding that most of the produced water in Wyoming does not meet Tier I irrigation default standards and therefore, all existing and future oil and gas operations in Johnson County and the entire state will be impacted. Coalbed natural gas development and production will be further reduced with the addition of more restrictive and costly constraints such as this. At a time when CBNG producers are struggling with low gas prices, any additional regulatory burden will further discourage development and production, thereby reducing even more the revenue flow to local governments. As local governments have invested in basic infrastructure such as roads, jails, law enforcement, etc., continued revenue flow is necessary to support these functions.

The sharp decline in production is reason to question the need for new produced water standards (if the rule was actually made in response to concerns for PRB production). Additionally, the decline in production is reason to uphold the balancing criteria and delay the adoption of the proposed rule until DEQ has fully identified and considered "the character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected". W.S. 35-11-302 (a)(vi)(A) Increased regulatory costs for production and the costs for new water management facilities could mean the difference between shutting wells in and permanently plugging them.

Actions by government to regulate activities of the citizenship, business and industry must always be considered in relation to the economic impact that it will have for livelihood and well being of individuals and businesses to be certain that monetary damages to commerce do not out weigh the benefits of the regulation. A socio-economic impact and analysis is therefore crucial to conduct. No technical reports by the DEQ or EQC performed a cost/benefit or risk analyses, so the socio-economic implications of the proposed rule are really questionable. Dr. Raisbeck's study solely focused on whether produced water could have adverse impacts on livestock. It failed to identify (or consider) the benefit and value of providing produced water to the livestock. The EQC is currently trying to determine the technical impact the proposed rule could have – but EQC denied the Counties' request to complete a socio-economic impact and analyses study. Johnson County asks the Council to request such studies to be completed. In addition to these basic studies, the DEQ should collect more information to determine the actual impacts the proposed rule will have on existing and future oil and gas operations. DEQ should evaluate what the implications will be if Raisbeck's standards are adopted for livestock water.

Imposition of wide-reaching regulation and strict water quality standards pose the risk of reducing or eliminating the flexibility of landowners and operators to manage produced water for the maximum beneficial use. Adoption of a rule that applies the same standard to all water issues across the state does not seem logical nor in the best interest of the citizens. The proposed rule should allow landowners the ability to decide what is best for their livestock and land, and they should be able to waive the water quality standards when they think the benefits outweigh the risks. Johnson County supports these waiver exemptions in the proposed rule. We also ask a non-severability clause be inserted, so that the EPA can't strike this portion of the rule during their review, or any other portion. A non-severability clause will mean the entire rule is invalid if the EPA strikes any of it.

Thank you for reviewing our comments.

Respectfully submitted,

Gerald E. Fink

Gerald E. Fink, Chairman
Johnson County Commissioner