

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE APPEAL )  
OF CLABAUGH RANCH, INC. FROM ) Docket No. 09-3806  
WYPDES PERMIT NO. WY0042102 )

**FILED**

SEP 22 2009

Jim Ruby, Executive Secretary  
Environmental Quality Council

**JOINT STIPULATION FOR MODIFICATION OF WYPDES PERMIT NO. WY0042102**

The Wyoming Department of Environmental Quality (DEQ) issued a major modification to the renewed WYPDES Permit No. WY0042102 on or about May 6, 2009 authorizing Pennaco Energy, Inc. to discharge water produced from its coal bed methane operations into on-channel reservoirs in Wild Horse Creek drainage. On June 29, 2009, Clabaugh Ranch, Inc. (Clabaugh) filed Petitions requesting the Wyoming Environmental Quality Council (Council) reverse DEQ's decision to grant the permit. DEQ, Pennaco and Clabaugh (the Parties) are the only parties to this contested case before the Council.

Chapter 1, Section 11(a) of the DEQ Rules of Practice and Procedure provides for disposition of contested cases by stipulation of the parties upon approval of the Council. For purposes of this case, W.S. § 35-11-112(c)(ii) authorizes the Council to order that a permit be modified, subject to applicable state and federal law.

The Parties have reached agreement on terms for disposition of this matter prior to hearing. The parties further agree that the Joint Stipulation and Order in this case are not intended to be considered as precedent or binding on DEQ in future permit applications or appeals.

The Parties jointly stipulate to the entry of the attached Proposed Order by the Council:

1. Approving and binding the parties, their successors and assigns to the terms of this Joint Stipulation, including the following modification to WYPDES Permit No.

WY0042102:

a. Inserting the following replacement language in the (1) Permit Renewal, Statement of Basis, Page 2, second paragraph under "Facility Description" and (2) Permit Renewal, Page 2, Part I.A.1., second to last paragraph on page:

The permittee is required to contain all effluent from outfalls in the on-channel reservoir at this facility except that if an individual reservoir must be drawn down for necessary repair or reclamation. Release from an individual reservoir for repair or reclamation purposes is permitted if prior written authorization is granted by the WYPDES program in association with use of assimilative capacity credits for the Powder River Basin, which authorization letter will specify the release volume, duration and individual reservoir(s) covered. In the absence of such written authorization for release in association with the necessary repair or reclamation of a reservoir, the following containment requirements will apply at the reservoir: the permittee will be required to contain all produced water within the on-channel reservoir during "dry" operating conditions. This permit prohibits discharge of effluent from the reservoir except during periods of time in which natural precipitation causes the reservoir to overtop and spill. Intentional or draw-down type releases from the reservoir will constitute a violation of this permit. Discharge from the reservoir is limited by the permit to natural overtopping and shall not extend beyond a 48 hour period following commencement of natural overtopping. It is the responsibility of the permittee, to adequately demonstrate the circumstances in which reservoir discharges occurred, if requested to do so by the WYPDES program.

2. Ordering that WY0042102 now be modified as set forth above;
3. Dismissing Clabaugh's pending Petition for review of the issuance of WYPDES

Permit No. WY0042102 with prejudice; and

4. Providing that each party shall bear its own costs and attorney fees through the

Council's entry of such order.

Respectfully submitted September 22<sup>nd</sup>, 2009.



Tom C. Toner, Bar No. 5-1319  
Yonkee & Toner, LLC  
319 W. Dow St.  
P. O. Box 6288  
Sheridan, WY 82801-1688  
Telephone: (307) 674-7451  
Facsimile: (307) 672-6250  
ttoner@yonkeetoner.com  
ATTORNEYS FOR CLABAUGH RANCH, INC.



John S. Burbridge, Bar No. 5-2856  
Wyoming Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002  
jburbl@state.wy.us  
ATTORNEYS FOR WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY



Mark R. Ruppert, P.C., Bar No. 6-3593  
Matt J. Kelly, Bar No. 6-4278  
HOLLAND & HART LLP  
P. O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175  
ATTORNEYS FOR PENNACO ENERGY, INC.

4610353\_1.DOC



4. Providing that each party shall bear its own costs and attorney fees through the Council's entry of such order.

Respectfully submitted September \_\_\_\_\_, 2009.



---

Tom C. Toner, Bar No. 5-1319  
Yonkee & Toner, LLC  
319 W. Dow St.  
P. O. Box 6288  
Sheridan, WY 82801-1688  
Telephone: (307) 674-7451  
Facsimile: (307) 672-6250  
ttoner@yonkeetoner.com  
ATTORNEYS FOR CLABAUGH RANCH, INC.

---

John S. Burbridge, Bar No. 5-2856  
Wyoming Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002  
jburbl@state.wy.us  
ATTORNEYS FOR WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY



---

Mark R. Ruppert, P.C., Bar No. 6-3593  
Matt J. Kelly, Bar No. 6-4278  
HOLLAND & HART LLP  
P. O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175  
ATTORNEYS FOR PENNACO ENERGY, INC.

4/

Providing that each party shall bear its own costs and attorney fees through the

Council's entry of such order.

Respectfully submitted September \_\_\_\_\_, 2009.

---

Tom C. Toner, Bar No. 5-1319  
Yonkee & Toner, LLC  
319 W. Dow St.  
P. O. Box 6288  
Sheridan, WY 82801-1688  
Telephone: (307) 674-7451  
Facsimile: (307) 672-6250  
ttoner@yonkeetoner.com  
ATTORNEYS FOR CLABAUGH RANCH, INC.

---

John S. Burbridge, Bar No. 5-2856  
Wyoming Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002  
jburbl@state.wy.us  
ATTORNEYS FOR WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY



---

Mark R. Ruppert, P.C., Bar No. 6-3593  
Matt J. Kelly, Bar No. 6-4278  
HOLLAND & HART LLP  
P. O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175  
ATTORNEYS FOR PENNACO ENERGY, INC.

4610353\_1.DOC

4. Providing that each party shall bear its own costs and attorney fees through the Council's entry of such order.

Respectfully submitted September \_\_\_\_\_, 2009.



---

Tom C. Toner, Bar No. 5-1319  
Yonkee & Toner, LLC  
319 W. Dow St.  
P. O. Box 6288  
Sheridan, WY 82801-1688  
Telephone: (307) 674-7451  
Facsimile: (307) 672-6250  
ttoner@yonkeetoner.com  
ATTORNEYS FOR CLABAUGH RANCH, INC.

---

John S. Burbridge, Bar No. 5-2856  
Wyoming Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002  
jburbl@state.wy.us  
ATTORNEYS FOR WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

---

Mark R. Ruppert, P.C., Bar No. 6-3593  
Matt J. Kelly, Bar No. 6-4278  
HOLLAND & HART LLP  
P. O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175  
ATTORNEYS FOR PENNACO ENERGY, INC.

4610353\_1.DOC