THE STATE   OF WYOMING

Office of the Governor

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Terri A. Lorenzon, Director
Environmental Quality Council

MEMORANDUM

RECEIVED DEC 1 2 2006

TO: Mr. Mark Gordon, Chair, and Members, Environmental Quality Council
              Ms. Terri Lorenzon, Director/Attorney

FROM: C.A. "Kip" Crofts
              Counsel to the Governor

SUBJ: Powder River Basin Resource Council (PRBRC) Petition for Revision of Chapter
              2, Water Quality Regulations for coal bed methane operations.

DATE: December 11, 2006

On November 29, 2006, you delivered to the Governor's office your notice of intent to
propose, and have a public hearing upon, the above referenced new or amended regulations. You
asked that the Governor's office approve your moving forward with this by December 1, because
you already had a hearing scheduled and wanted to publish notice of that hearing.   Your notice
indicated that advice from the Attorney General as to statutory authority for the new rules was
forthcoming.

After a discussion with the Governor, I notified Ms. Lorenzon by email that same
evening, November 29, that we needed more time to consider this important matter. At that time
we had no advice from the Attorney General.   I advised Ms. Lorenzon in that email that "You
should not proceed until you have authorization from the Governor," and promised to keep you
advised.

We now have advice from the Attorney General by Memorandum dated December 6,
2006. I enclose a copy of that Memorandum for your information. Generally, the Attorney
General believes there are some concerns about whether or not these new rules could pass a

judicial challenge at this point. I share that concern. It may well be that the Attorney General's concerns, and mine, can be allayed with further information. But that information has not been provided to us at this point.

I am aware that W.S. 16-3-106 provides that any person (PRBRC) may petition for the promulgation, amendment, or repeal of rules. However that section then places the responsibility upon the agency to consider the petition, and either reject it, or engage in the requested rule-making process. Clearly you are not obliged to propose the rules requested by the citizen or group and engage in a hearing and rule-making procedures simply because you are asked to do so. Rulemaking, to include public hearings, is an expensive process in money and time. But more important, the mere proposing of new rules by a State agency, and the setting of a public hearing, will likely have far-reaching effects on many citizens. At the very least, it may cause people to incur expense or other inconvenience to appear at the hearing or to submit written responses. Or, it may cause citizens to take, or forbear from taking, certain business decisions in anticipation that the rules will in fact be changed, assuming the Agency would not propose them if it were not serious about them. So we should not, as was suggested to me in a telephone conversation about this matter, simply hold a hearing to see what happens – as if to satisfy our curiosity about the reaction we might get. That course of action is not responsible government.

I have been advised that the DEQ has contracted with the University of Wyoming to study this matter, and that a report is expected this summer. Thus it would appear to me that perhaps we have the "cart before the horse" and a public hearing, before the Department itself has all the facts, and knows what it wants to propose, is simply inappropriate timing.

We can't always be certain, when we adopt new rules, that some Court won't someday find them to be improper, but it is irresponsible to go forward, as here, when potential problems seem so apparent.

I therefore reiterate the message of my November 29 email – you should not proceed with the hearing and rule-making process at this time. When you can answer the questions raised in the Attorney General's Memorandum, you are invited to submit the matter again.