



HOT SPRINGS COUNTY COMMISSIONERS

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RECEIVED FEB 16 2007

Date: February 16, 2006

To: Mark Gordon, Chairman
Environmental Quality Council of Wyoming
Herschler Building, 1 West
122 West 25th Street, Room 1714
Cheyenne, Wyoming 82002

Re: Comments from Hot Springs County Concerning the
PRBRC Petition to Amend Wyoming Water Quality Rule
Chapter 2, Appendix H

Dear Sir:

Hot Springs County desires to submit the following written comments concerning the Petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H.

Summary: Hot Springs County recommends that the petition submitted by the Powder River Basin Resource Council be denied due to an anticipated negative impact on the social/economic structure of Hot Springs County. It is our determination that the petition was narrowly focused upon the CBM industry in the Powder River Basin, and did not address the impacts of the petitioned changes on other industries, Counties and the State of Wyoming.

Hot Springs County asserts that various County, State and Federal regulations all require the utilization of social/economic impact studies when evaluating proposed State and/or Federal actions; and that, the PRBRC's petition was materially deficient by not including such social/economic impact studies.

Discussion:

- 1.) Hot Springs County, and at least three other "have not" Counties (such as Niobrara, Big Horn and Washakie) have not shared in the current "boom" in Wyoming and have extremely fragile economies. Hot Springs County actually lost population (-5.8% or 284 people) during the period 2000-2004 (see attachment A), has the oldest mean average age of any County in Wyoming and has a non-diverse economy based on several critical industries. Approximately 70% of the County's tax revenue is generated by the oil/gas industry which has been in decline for several decades (see attachment B).

- 2.) The economy of Hot Springs County is precariously dependent upon the agriculture, tourism, health care and oil/gas industries. None of the County's base industries is strong enough to endure further regulations, restrictions, loss of population, droughts, economic disruption, and other various influences which may negatively impact the industries.
- 3.) Hot Springs County, in order to legally adopt policies and goals addressing natural resources on State and Federal lands, passed the Hot Springs County Natural Resources Plan for State and Federal Lands after lengthy public hearings. The plan contains certain specific policies and goals that relate to natural resource issues and the impact of management policies and regulations on the social/economic structure of the County (see attachment D).
- 4.) Hot Springs County asserts that enabling legislation (Wyoming Statute 35-11-302) for the Water Quality Division of the Department of Environmental Quality (see attachment E), requires:

“(vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board shall consider all the facts and circumstances bearing upon the reasonableness of the pollution involved including:

 - (A) The character and degree.....
 - (B) **The social and economic value of the source of pollution;”**
- 5.) Hot Springs County asserts that Federal NEPA regulations require a detailed analysis of the social/economic impact of any Federal action, including any Federal action “connected” to a State's actions. (see attachment C).
- 6.) As stated in (3), (4) and (5) above, County, State and Federal regulations all require an analysis of the effect of a State/Federal action upon the social-economic structure of the local population.
- 7.) Hot Springs County asserts that the PRBRC's petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H is narrowly focused and does not contain a social-economic analysis of the effect of the proposed amendment to the State in general and to the various Counties, including the small “have not” Counties such as Hot Springs County. It is the contention of Hot Springs County, that the petition is materially deficient by not including a social-economic analysis.
- 8.) Hot Springs County recommends that an independent, third party social economic study be commissioned for purposes of defining the social-economic impact of the proposed action on the Counties and the

various industries within the Counties. The Hot Springs County Land Use Plan for State and Federal Lands, does in-fact require such a study(ies) :

“2. As required by Federal statute, Hot Springs County shall require that both State and Federal agencies assess the effect of their actions on the economy, custom and culture of Hot Springs County by utilization of economic studies such as cost/benefit analysis, economic impact analysis, lowest cost alternatives, most economic benefit analysis and analysis of the economy of the County in order to protect its general economic health. Hot Springs County at its discretion, may be involved in this process.”

- 9.) Hot Springs County asserts that it is a legally established division of the State of Wyoming; and as such, The Hot Springs County Land Use Plan for State and Federal Lands is authorized by legislative action and has significant legal standings and must be considered by the Environmental Quality Council as it considers the petition. Hot Springs County Commissioners approved the plan on April 4, 2005 by Resolution 2005-03 (see attachment F).
- 10.) Hot Springs County is aware that other Counties in Wyoming have adopted similar plans (including Washakie and Fremont) and suggests that those legally adopted plans need to be considered also.
- 11.) Hot Springs County highly recommends the social/economic studies prepared by the University of Wyoming Department of Agriculture and Applied Economics. An example of an suitable economic analysis entitled Economic Impacts of Reductions in Federal Grazing in Fremont County, Wyoming , by David “Tex” Taylor, Tom Foulke, Jim Thompson, and Roger Coupal of the University of Wyoming is attached (see attachment G).
- 12.) Hot Springs County asserts that the USFS sufficiently considered the social/economic affect of their proposed action entitled Forest Plan Amendments for Grizzly Bear Conservation for the Greater Yellowstone Area National Forests: Draft Environmental Impact Statement , July 2004; and that, the University of Wyoming, Department of Agriculture and Applied Economics contracted for and prepared much of the data. Hot Springs County supports and recommends the utilization of best available science which the report represents.
- 13.) Hot Springs County and its residents participated in previous reviews of the discharge water issue in 1988. At that time a letter from the Thomas E. Enright, Area Manger, Cody Resource Area, Bureau of Land Management to John Wagner, Water Quality Division, Wyoming

Department of Environmental Quality, dated November 03, 1988 (see attachment H) stated:

“Our interest in water quality, from point source discharges, is primarily related to the surface discharge of water produced in conjunction with oil and gas production and the various beneficial uses to which this water is presently applied. In the Cody Resource Area, produced water is providing benefits to riparian vegetation, waterfowl and shorebird habitat, and drinking water sources for livestock and terrestrial wildlife. We view this produced water as an important benefit to our management of the public land.”

- 14.) Hot Springs County participates in the Big Horn Basin Sage Grouse Working Group which has identified water improvements and usage of discharge water as being of paramount importance in sustaining sage grouse populations. A Hot Springs County water improvement project was awarded a \$15,000 grant (from a legislatively authorized \$500,000 appropriation for sage grouse projects) for spring improvements designed to improve wildlife watering resources. The County asserts that more restrictive water discharge standards would negatively affect the County’s wildlife populations.
- 15.) Hot Springs County asserts that natural discharge water from the Big Springs at Hot Springs State Park and numerous smaller springs, is co-mingled with Class I water from the Big Horn River after it exits the Wind River Canyon: and that, the naturally occurring species in the Big Horn River from the point of co-mingling to the Montana Sate line, have adapted to highly mineralized water and therefore, are tolerant of discharge waters high in total dissolved solids and sulfates.
- 16.) Hot Springs County asserts that it is west of the 98th Parallel, is situated in a zone of semi-arid rainfall, and that highly mineralized water is commonly encountered both naturally and through man-made sources, and that discharge water high in total dissolved solids (tds) and sulfates is not uncommon or negatively perceived.
- 17.) Hot Springs County asserts that it has endured 4-5 years of continuous drought and that the County’s agricultural operations are financially distressed by the enduring drought. The County also asserts that many of its agricultural operators are dependent upon surface discharge waters for livestock watering and irrigation.
- 18.) Hot Springs County asserts that most of the County’s oil fields are old, aged oil fields commonly on secondary and/or tertiary recovery; and that, the County’s oil production has experienced steady decline. The County also asserts that County government is financially dependent

upon the aged oil fields for greater than 70% of the County's assessed evaluation.

- 19.) Hot Springs County asserts that it is actively involved in monitoring and mitigating water quality problems in the County – primarily through the activities of the Hot Springs Conservation District. The Hot Springs County Land Use Plan for State and Federal Lands recognized three pertinent water quality studies commissioned by the Hot Springs Conservation District during the period 1999-2005 (see attachment J). Several of the studies and reports were funded or partially funded with grant money from the Wyoming Department of Environmental Quality.
- 20.) Hot Springs County asserts that the surface water discharge problems in the Powder River Basin are a “localized” problem; and that, the petition presented by the PRBRC failed to recommend “localized” solution(s) such as water quality standards specific to the CBM industry. **It is the recommendation of Hot Springs County, that CBM surface water discharge standards be adopted specifically for the CBM industry which DO NOT impact the other industries and Counties in Wyoming.**
- 21.) Hot Springs County asserts that it is the responsibility of the petitioning party, the PRBRC in this case, to pay for the required social/economic impact studies associated with its petition. The burden of producing the social/economic impact studies should not be borne by the Environmental Quality Council, the Department of Environmental Quality, affected industries, affected Counties and/or affected individuals.
- 22.) Hot Springs County asserts that The Hot Springs County Land Use Plan for State and Federal Lands contains a provision allowing for conductance of public hearings by the Board of County Commissioners in order to establish Findings of Facts and Conclusions of Law; and that, County input concerning the social/economic impact of surface water discharge on the County's general welfare can be further determined by such hearing(s); and that, the Environmental Quality Council also has the capability of conducting public hearings in the affected Counties; and that, joint hearings conducted by individual Counties and the EQC may be appropriate.
- 23.) With respect to the PETITION TO AMEND WYOMING WATER QUALITY RULE, CHAPTER 2, APPENDIX H, Hot Springs County is specifically opposed to ALL of the proposed changes indicated in Exhibit 1 to the petition and recommends against lowering of the water quality standards for:

Sulfates: currently 3000 mg/l and no change recommended
Total dissolved solids: currently 5000 mg/l and no change recommended
Barium: currently 1.0 mg/l and no change recommended

Hot Springs County also asserts that the actual, historic beneficial use of surface discharge water has been and should remain as year around discharge in order to meet the needs of the livestock industry, the needs of wildlife and the discharge needs of the oil/gas industry.

- 24.) Hot Springs County further asserts that Federal public land management regulations require the various public lands in Hot Springs County to be managed for multiple use, sustainable yield and increased productivity. Hot Springs County has adopted a “threshold” for the sustainable yield criteria in the Hot Springs County Land Use Plan for State and Federal Lands which states:

“ Public lands are to be managed for sustainability and/or increase in all of the resources to include the social/economic affect on the County and its residents. To that end, no net loss in total economic activity, adjusted for inflation, shall be acceptable; and in order to meet this goal, mitigation measures are to be employed by State and Federal land managers.”

Hot Springs County asserts it **HAS NOT** been able to achieve sustainability of its economic activity, especially the oil/gas industry; and that, no further net loss in economic activity is tolerable; and further, the County desires to restore economic activity to historic levels.

- 25.) The Hot Springs County Land Use Plan for State and Federal Lands, has a provision in the Incremental Bureaucratic Regulations section on page 73, which requires:

“ 4.) As required by the Administrative Procedures Act, Hot Springs County shall require the various agencies to document that their decisions adequately took into account the health, safety, custom, culture and general welfare (including the economic impact) of their actions on the County.”

- 26.) The Hot Springs County Land Use Plan for State and Federal Lands states:

“Hot Springs County asserts that the County, at its discretion, has the right to be involved in all decision making and regulatory functions which have

an effect on the county's economic stability, custom, culture and the well being of its citizens."

The Hot Springs County Commissioners, at their regularly scheduled Board of County Commissioners on February 7, 2006, elected to formally participate in the decision making process relating to the petition to amend the surface water discharge standards, and requests full notification and involvement in the decision making process as a division of State government.

We request that these comments be entered into the public record concerning the PETITION TO AMEND WYOMING WATER QUALITY RULE, CHAPTER 2, APPENDIX H. In addition, we request that the entire Hot Springs County Land Use Plan for State and Federal Lands be recognized as extant and amended to the public records in its entirety as it relates to the PRBRC petition.

Thank you very much for the opportunity to publicly comment and submit written testimony concerning the petition to amend.

Brad W. Basse, Chairman of the Hot Springs County Commissioners