

Mr. Mark Gordon – Chairman,
Members of the Wyoming Environmental Quality Council
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Terri A. Lorenzon, Director
Environmental Quality Council

Mr. Gordon and Members of the Council;

I am writing to you today to voice comments against adopting the Citizen Petition for Rulemaking proposed by the Powder River Basin Resource Council et al (Docket 05-3102) – (including Revisions) and wish for my comments to be inserted as part of the record, which I understand to be open through Monday, January 29, 2007.

I am employed by Yates Petroleum as a Regulatory Supervisor, and the folks I have the privilege of working with and I work with landowners and regulators daily to conduct responsible project planning, permitting, implementation, monitoring and ongoing operation of Coalbed Natural Gas projects in the greater Powder River Basin. I have been a resident of Wyoming for 15 years – living in Cheyenne and then later Gillette. I was born and raised in northeastern Montana and moved to Wyoming to pursue employment in a state more interested in economic development, as many of the small towns in the area I am from were drying up. I have a Bachelor's degree in Chemistry and work daily with produced waters and water management in the Powder River Basin.

With your permission, I wish to first thank the Council for your work, which is difficult and likely thankless at times and for the opportunity to provide substantive comment. It is my sincere hope that my comments will be taken by you as the respectful, but direct, input of a citizen who has valuable things to say. I have attempted to be as brief as the subject would allow without diluting the message.

a. The petition as it is written asks for far more stringent water quality constituent limits to be established for CBM discharges than are applied to traditional oil and gas discharges.

Wyoming water quality rules and regulations that relate to discharges are built on a foundation of suitability for use. If the use of water is the same (in this case many times the use is for stock and wildlife use) the water quality standards should be based on that use. This petition now proposes that if a CBM discharge was occurring into the east side of a rancher's reservoir that its constituent limit for Barium, TDS and Sulfates should be set more stringent than a traditional oil and gas treater discharge that was occurring on the west side of the same reservoir for these same exact constituents. The proposed use is the same, the chemical constituents identified are the same and the receiving water/reservoir would be the same - but somehow the water quality standards should be different? Adopting a rule to do this flies in the face of reason, good science and would most certainly not pass an arbitrary and capricious test (the petitioners propose that the Barium Standard be 10 times more restrictive than the drinking water standard !). Please see the letter from DEQ's John Wagner dated January 5, 2007 regarding this subject.

I believe it is also appropriate to point out that the original petition (before revisions) on page 5 under number 2 discussed Effluent Limits being amended for produced waters (seemingly across the board). Now the petition, if I understand the revised petition correctly, is saying that the current water quality standards are appropriate for waters produced in the Bighorn Basin and other traditional oil and gas discharges across Wyoming (which includes the

Powder River Basin) and should be left alone as they are appropriate. It seems to me that by proposing the current, unchanged water quality standard for those traditional discharges the petition is essentially arguing concurrently for and against the current water quality standards being appropriate for use, within the same petition action. This just looks to me to be the petitioner attempting damage control for affecting these other discharges with the proposed petition as they did not want to take away their water. They did not, however appear to extend the same protection for current users of CBM produced waters that would be robbed of the use of this water if the rule was enacted as the petition is written.

b. The petition asks for water to be discharged only if it can be put to a documented, demonstrated beneficial use. Discussion has been held as to whether or not demonstration of beneficial use should be provided.

I believe that the petitioners stand on this issue seems to have modified along the course of this discussion. At the January 15-16 hearing I believe that I heard the petitioner discuss that if an antelope or cattle had access to water then it was of beneficial use. The petition reads differently.

Regardless of the current stand of the petitioner, this issue is straight forward to illustrate. If the traditional oil and gas and other discharges such as publicly owned treatment works produce a water that is of a quality that is beneficial to wildlife and livestock and it is available to them, then it is of beneficial use and it appears that no one argues that. CBM produced water is water of a quality that is beneficial to wildlife and livestock and it is available to them (and in most cases is better quality than the traditional oil and gas discharges), and therefore it not of beneficial use ?

DEQ has taken the right approach on this issue. Water of the quality that is produced by coalbed wells in the PRB goes well beyond the huge use it has for large mammalian wildlife and livestock. It is literally a springboard for wildlife to flourish. The list is nearly endless – waterfowl such as ducks and geese, muskrats, amphibians of all types, fish and their minnows, turtles and snakes, upland birds, shorebirds, songbirds and insects – many of which provide a portion of the food chain for predators such as raptors, fox, coyote, badgers etc. These ecosystems benefit tremendously from this produced water – and some of these species would not exist at these sites but for these discharges. Beneficial use of this quality of produced water, whether the discharge is to a drainage, a reservoir or an off channel pit for use by the whole scope of wildlife across the species list is huge and undeniable. Bottom line is that nature is opportunistic when it comes to water use – even more so in the arid climates of Wyoming, and that broad beneficial use by a myriad of wildlife, with this quality of water, is simply a given.

Consider for a moment the converse argument. Could someone successfully argue that when water of this quality was discharged and made available to wildlife that no wildlife or livestock would make beneficial use? Clearly not.

In the interest of disclosure, I do receive calls from ranchers who are concerned about coalbed water.

c. No CBM operator can discharge effluent which meets the definition of "pollution" or would cause "pollution" as defined, in the receiving stream.

This language proposes a standard that places a regulatory moratorium on CBM produced water discharge regardless of quality, unless a produced water had all of its chemical constituents completely removed. There are no existing surface waters or groundwaters that would pass this definition and therefore could be discharged. No municipal drinking water in Wyoming could clear that hurdle. It is unlikely that water could even be removed from a stream, put in a clean pipe

and transported 1 mile parallel to that stream and then re-introduced into that same stream without some change to the physical, chemical or biological constituents than the location of the receiving water. Again, this sort of restriction is both arbitrary and capricious.

It is my understanding that the petitioner may have recently stated that this was not the intent of the petition. The petition says what it says. I have to base what would happen with this provision of the proposed rule on what Mr. Wagner would do with that rule if he were given it, as it is his signature that would be required on the WYPDES permit. In his January 5, 2007 letter he states :

“There is probably no case where a CBM discharge would be able to meet all of the conditions of this section of the proposed rule. It is a standard to which no other industry or type of discharger is being held”

I would ask the Council to consider approaching the Attorney General's office to acquire an opinion as to whether this specific portion of the rule would be appropriate that holds CBM discharges to a standard that no other industry or discharger is held to (if that has not already been done).

d. There are conflicts with some landowners and some existing discharges. What about those situations ?

It is unlikely that any undertaking could take place of the size and scope of Coalbed development in the Powder River Basin without there being conflicts. There are conflicts when activities of development go on. Subdivisions of houses being built are controversial. Highway projects have conflicts. Wrangling occurs when someone wants to build a new retail store. There are mechanisms for dealing with these conflicts in place currently. Below are some of the ways these conflicts can be resolved:

- Private Surface Use Agreement among parties
- Dining room table arguments/ name calling and eventual agreement after a long day, week, month, year
- Binding arbitration
- Non-binding arbitration
- Civil litigation
- Arm Wrestling
- Coin Flipping
- Rock / Paper / Scissors

I don't mean to be flippant in mentioning any of these options, rather I do so to point out that to a given combination of operator and landowner any one of these above options might just be the viable solution, and it would be their right to choose a method that you or I might consider not to be the appropriate way to settle the issue. This is still the United States of America and folks can choose the way they resolve disputes. Dispute resolution and dealing with who damaged what and assigning responsibility is a question that is asked and answered every day in our country. It is the

right of any citizen or company who feels he is damaged to go about addressing it with the already long list of tools to do so.

Members of the Council, you have a petition before you that is really asking you to do something that is outside your scope with respect to resolving allegations of damage and disagreement, and puts you in the uncomfortable position of being asked for a solution you simply can't and shouldn't deliver. Water quality is really not the issue here, and neither is environmental protection or lease rights or questions of beneficial use. Disagreement among some parties is the issue here. Establishment of unrealistically restrictive water quality standards will not resolve these issues, as the presence of distilled water would still be a problem for some. Ceasing all discharge will not solve the issues (as a matter of fact it will open a large list of new and exciting ones). The real way to empower solutions is to decline the request to solve it for the parties with new rules. This focuses the discussion and the responsibilities where it belongs – between the parties.

e. Things the Council needs to consider

1. There is a long, long list of users of Coalbed and other produced waters that are quietly enjoying those uses and their associated water rights under current standards. Should you grant the petition as it is written there will be a takings of water use, water rights and agricultural value added from a large group of ranchers. There would be on many ranches a measurable decrease in the agricultural productivity of their operations resultant from this proposed rule change – and according to at least one rancher and the map she provided there well over half a million acres of ranches in the Powder River Basin that are using and are happy with these discharges that she is aware of. Who will compensate these ranches for their lost revenues and lost opportunity costs? Seems like a large baby to throw out with the bath water (no pun intended).

2. Discharge water quality standards are not to be set in a vacuum, but are required to be set in consideration of economic impacts, among other considerations. I hope that the Council has grasped the impact to the industry and ranching in the Powder River Basin that would be direct effects of its adoption.

a. The Barium Standard proposed by the petition places 99% of current operating outfalls immediately out of compliance (see presentation by Rob Garland to EQC in the record). This proposed limit does not have credible science behind it. Many wells would become immediately uneconomic as treatment to those limits would be difficult and expensive. This overrestrictive Barium limit, by itself causes a large portion of the gas resource not to be left in the ground and not recovered. Operators in the Basin could be asking the State for compensation for resultant takings from this portion of the proposed rule alone, a pursuit that they would likely have success in.

b. The workforce impacts, effects to related commerce, royalty revenue, tax base and broad economic ramifications of the petition as it is proposed is nothing short of catastrophic to this industry. A drive through the communities of Gillette, Moorcroft, Newcastle, Buffalo or Sheridan would likely not yield a look at a business that would not be negatively impacted by the results of this petition as it is proposed. Tax revenues and royalties to the state lost would affect all residents, and could single handedly turn the current fiscal position of our state upside down. Taxable valuations drop and the downward cycle picks up momentum.

c. Couple the crippling of the CBM industry with 2 or 3 more years of our recent drought and the untimely loss of produced water by ranchers and then take a near term look at Northeastern Wyoming. Gillette could easily become like towns just over our northern border into Montana. Businesses would struggle to remain afloat. Young people would

leave the state in droves due to lack of economic opportunities. Perhaps someone decides that the water emanating from these same coal seams should not be allowed to flow out of them at the area coal mines for lack of meeting their definition of beneficial use and are further not suitable to be put on the ground for dust control (as is currently the practice). The next step could easily be that someone takes up the argument that the split effluent standard proposed by the rule is not appropriate, and that all discharges are now to be held to the standard placed on coalbed by the petitioners rule. Those traditional oil and gas discharges will likely not meet the new overly restrictive TDS, Sulfate and Barium limits and so those discharges become uneconomic to continue. While there might be those that would dismiss this as some sort of doom and gloom outlook, I would suggest looking at it and thinking carefully about how few regulatory decisions it would actually take for this scenario to occur. Further, take a look at the case presented in this petition – many of these “doom and gloom” arguments could already be derived from information already presented in this matter.

In summation, the PRBRC petition asking for revisions to Chapter 2 has been given its due consideration by the Council. The petition asks to have arbitrary standards attached to CBM produced water that no other discharger is held to, and the AG's office is on record indicating their problems with the petition. Frankly the rule looks like it would get struck down quickly if adopted. The petition's rule does not solve the problems that it proposes to and would create a long list of problems if adopted. The economic impacts of the proposed petition alone deserve a strong look by the council. I would ask that the Council reject this petition immediately and invest its valuable time elsewhere.

Thank you for your time your consideration and the chance to comment. Please feel free to contact me concerning these comments.

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