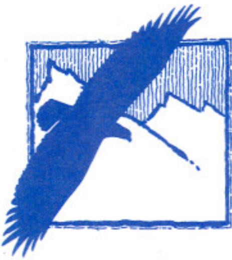

WYOMING
OUTDOOR
COUNCIL

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Rec'd 1-18-07

TO: Wyoming Environmental Quality Council

FROM: Steve Jones, Wyoming Outdoor Council

RE: Petition for Rulemaking, Appendix H and I, Chapter 2, Wyoming Water Quality Rules and Regulations

Jan. 18, 2007

Dear Council members:

Wyoming Outdoor Council presents the following comments with respect to the proposed Rulemaking of the Powder River Basin Resource Council, Appendix I to Chapter 2.

There can be no question that produced water from CBM discharge causes damage to native grass meadows, bottomland meadows, irrigated lands, hay meadows, trees, vegetation, riparian habitat, fish and waterfowl habitat, problems moving cattle and foot rot in cattle.

These environmental harms have been well-documented for the Environmental Quality Council (EQC). We do wish to make the following points with regard to these proceedings:

1. We wish to address the allegations that have been made by industry, and by DEQ, that the EQC does not have the jurisdiction to adopt the suggested rule (Appendix I). Such a contention is utter nonsense. While certainly the EQC may conclude that it does not want to adopt the proposed rule, doing so based upon an assertion that to do so would be beyond the jurisdiction of the DEQ, under the Wyoming Environmental Quality Act, is not sound, and has no basis in the law.

2. The definition of pollution is very broad. Any substance that adversely affects the environment can be considered pollution. This definition is obviously broad enough to encompass erosion. Notably, the word erosion is used already in Chapter 2, and Appendix H, indicating that in the past, DEQ has always had the authority to address erosional problems.

3. Points of compliance downstream from the point of discharge can be established as part of any discharge permit. The EQA gives the DEQ that authority. NO person shall cause the alteration of the physical, chemical, or biological properties of waters of the state. This means that, in order to determine if such alteration has occurred, monitoring downstream points of compliance may be necessary.

4. The Clean Water Act requires that discharges from oil and gas facilities must be actually used, or else the discharge is not allowed. The proposed App. I simply restates that language from 40 CFR 435 Subpart E. The history of this provision is that an exception was made for discharges that occur west of the 98th meridian. East of that line, no discharges are allowed at all. IF it is argued that DEQ does not have the authority to require that discharges be limited to the actual use of the discharge, then they do not have the authority to regulate the discharge permit program at all.

5. As long as there is a rational distinction – which there most certainly is – between categories of pollutants, different regulations can be promulgated for each different category. Commonly, EPA handles this by adopting different Effluent Limitations Guidelines for different pollutants. There is nothing new or remarkable about this. There is clearly a huge difference between produced water from conventional oil and gas development and produced water from coal bed methane development. For instance, in 40 CFR 435, the only listed effluent limitation for conventional oil and gas produced water that is listed is an oil and grease limitation. This clearly is not helpful for CBM produced water, since for CBM produced water, there is no oil and grease content.

6. This whole petition has nothing to do with water rights. The groundwater withdrawal permits issued by the State Engineer's office make it very clear that the granting of the withdrawal permit does not confer any water rights to the permittee, nor to any potential downstream user. The State Engineer was very careful to steer clear of any such implication. Any person who might come to think they had a water right by virtue of the withdrawal of this CBM produced water is mistaken. So it is not possible to argue that water rights are being or could be taken away by this proposed rulemaking. There are no water rights attached to the withdrawal of CBM produced water.

7. This matter does not involve "return flow." Return flow is commonly referred to as water that has been used for irrigation and is then returned to the stream from which it was taken. The water involved in this matter is not return flow. It is groundwater – and usually it is groundwater that is not suitable for irrigation. That is the whole problem. It cannot be used to irrigate, for it will harm crops. In other words, it really is the antithesis of return flow. Part of the problem is that this CBM produced water becomes mixed with the natural ambient water flows in intermittent streams, and it overwhelms that natural flow, and then the entire stream cannot be used productively for irrigation or to water bottomlands.

8. The ability of the permittee to provide "credible data" as part of its permit application for a discharge permit is both salutary and feasible. The permittee should be required to show that the water to be discharged will be actually used, and such calculations can be easily made. Furthermore, the permittee should also be required to show that its proposed discharge, both in terms of quality and quantity, will not harm the environment. This should not be hard to demonstrate once some data is collected, including the quality of the discharge (using a representative sample of the proposed discharge, taken from a groundwater well) and the normal and natural flows (cfs) of the stream to which the pollution is to be discharged (so that an assimilative capacity can be calculated).

Thank you for this opportunity to comment.

Sincerely,

Steve Jones

Steve Jones
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