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February 14, 2007

Mr. Mark Gordon, Chairman
Wyoming Environmental Quality Council
122 W. 25th Street
Herschler Bldg., Rm. 1714
Cheyenne, WY 82002

Re: Oppose Action before EQC for Policy/Rulemaking on revising the **WQD's Chapter 1, Section 20, Appendix H**, aka: "Ag Use Protection Policy"

Dear Mr. Gordon:

I wrote to you a little over 2-wks ago, opposing the PRBRC's Petition of WQD Chapter 2 revision. I hope the EQC board uses their head & hearts when making that issue's recommendation later this week.

In that letter, I introduced myself and I will not reiterate, but have it suffice that I again write from dual perspectives: (1) as a family man, 8 year citizen of Gillette, fearful of economic downturn and impact the both referenced adoptions could make into reality and (2) as a professional, tax-paying citizen, whose future of gainful employment in Wyoming is highly dependent on the continued viability of the CBM industry here in the Powder River Basin.

I am compelled to write again to vehemently protest and have my voice heard, too. I know the changes to the WQD Ch. 1, Sec. 20, Appendix H (and/or Ch. 2), as proposed, will no doubt, gravely impact me and my family's optimism of the PRB CBM industry remaining strong, and our well being and retirement planning via another +20 years of foreseeable employment with the CBM industry.

This methane/CBM Play's BOOM, *which is within your power to KILL*, was founded on economics. In the early 1990s, Martins & Peck, discovered the technique establishing cheap, economic recovery of methane gas contained within the coal aquifers. Operators have to produce water, to lower pressure, to facilitate gas extraction from the coal. It desorbs out from within the coal, there is no gas cap or trap. Once out of the coal it migrates in the coal toward lowest pressure source, the well bore. Surface discharge of the good water was not a problem then and shouldn't be now – there are established techniques and BMPs in-place *or available, but not currently permit-able* that can manage problems.

Cheap economics, propelled the **BOOM** – as the CBM wells are nothing more than converted, simple water wells dually capturing gas. Today, similar wells have quadrupled in cost. Ancillary services for most permitting, materials, and labor have increased up to 10-fold. The economics of the CBM Play are already heavily taxed.

Deletion of Operator's surface discharge option, mandating expensive treatments and or injection, effectively will **BUST** the CBM Play; if your decision is to make this trial-Policy, a Rule.

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*Passing this **Policy into Rule*** presents an "unwritten" mandate *implying continued development opportunity using extremely costly operational **injection or treatment systems***, as the only **permit-able** discharge alternatives. Passing, as is, directly affects my family life and the community of Gillette, should industry's economic viability (i.e., surface discharge) be removed.

Yes, there were/are water problems and some necessary rules have been adopted (**these on EQC's table are not needed!**), and there were/are Rogue Operators that don't play by the Rules, but they are few and eventually get caught. The Oil & Gas Industry has been around for over 100-yrs and for the 1st 75-yrs, policed themselves. In the past 25-yrs, the Industry has become one of the most, if not THE MOST regulated in history. We don't need MORE rules, especially ones that are unattainable in compliance and politically motivated – in this case, to STOP CBM development, as we know it.

The way I see it, *we don't have a water quality or quantity issue*. **We have a water management issue**, nothing more than what industry policed years ago – except then it was oil management, not water.

Quality standards are already conservative, and waters above that standard are already being treated. Economics in those treatment areas are already difficult to maintain profit. To impose a 10 times more stringent standard will not work. It does no good – may be met at End-of-pipe, but to run it down the draw any distance to an ICP, because of the soluble soils, concentrations revert back to pre-treatment levels. **There is a natural balance these soils and waters attain.**

In my opinion, a ridiculous aspect of the proposed Rule change is that the new standards under consideration are derived from a California-based soils study. **Why not use local soils for any guideline change?** – as per the WWAB's suggestion for EQC to consider that any revisement of WY water quality standards be based the Bridger, MT Study; not Californian soil/water.

Quantity isn't the real issue, either. Albeit, there have been manageable problems. Many potential beneficial uses of the water are not considered because existing regulation makes it libelous for prosecution, because *there is no good way to transfer control to a landowner for their use* and/or it is cost prohibitive, often both. If you want to perform good Rule-making, figure THAT ability out!

Landowners have always asked for water to isolated, float-activated **tire tanks** – industry can no longer provide these because of *the liability* should it ever drop one drop on the ground. They've asked for water to establish **tree farms and wildlife shelters**; can't do, for same reason. They've asked, *"Why do all the Operators on my place have to have separate reservoirs?"* and often simultaneously point out, *"Operator A built this near empty reservoir, you can put your water there."* No can do; not with current **Rules** that **have forced Operators**, because of *the harsh liabilities*, **to form separate WMP strategies**.

In the 8 years I've been living in Gillette and working the PRB CBM Play, I've seen every applicable agency alter and modify "Rules" under their guidance and each time it puts one more layer of industry expense or accountabilty in the name of some protection, deemed necessary generally as a result of Rogue independent's action or to satisfy a begrudged landowner.

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I've also seen the CBM Industry mature. Industries responsible Operators & their sub-Contractors have had success conforming to most of the "Rule" changes within economic reasonableness and utilized an industry driven "peer pressure" to modify practices to accommodate most all landowner voiced complaints, primarily related to constructional surface disturbance excess. Migration of developments onto Federal minerals (78% of the PRB), all under BLM regulational guidance, has made all companies aware and forced them to address rectification of these past (early play, Fee minerals dominantly) practice grievances to where: now, the known modus operandi of "minimize disturbance" is the norm, irregardless of mineral status (Fee, Federal, or State). The DEQ has already severely restricted surface discharge to meet limits via Whole Effluent Toxicity (WET) Testing in a large sector, in the heart of the Play. The local community drinking water supply's (Gillette & Buffalo) have much higher tolerance.

WQD Ch. 20 already protects downstream users, so I voice opposition to WYDEQ's proposal for this Policy to Rule change – to have future and existing reservoirs to be built (retrofit) to contain the huge 50 yr/24 hr event, **in addition to produced water**. It definitely would protect against **all** water's, methane-generated included, migration across lands; but…

How could it still allow usage of upstream runoff-derived waters, when they are all held back; or meet companies dual mandates of "minimize disturbance" & "retain economic viability" in creation of these mammoth structures that nobody wants for posterity?

My 1st point is: that the CBM Industry is under enough governmental regulation, NOW!
Implementation of either Appendix H or the Ch. 2 Petition will kill the play as we know it.
Water has always ruled the West. We've been in a drought for over 7 years, with CBM waters being the only source providing "life's blood" to the majority of landowners that want the waters.
Don't cut off the hand that delivers.

My 2nd point is: that **We have a water management issue**, nothing more, as stated, than what industry policed years ago – except then it was oil management, not water. Evidence is this: *At one time, it was OK to run crude oil in a ditch* (ephemeral drainage). Such action today is, across the board, viewed absurd. Environmental awareness infiltrated the industry to make that kind of change via peer pressure.

Today, Industry-accepted "peer-Policy" is that having crude on the ground is a **Not-to-be-performed SOP** (standard operating practice). Similarly, with respect to the water issues that need management. We need a change in game planning. **We need a united Operator, Contractor, Landowner, and and All-Agency Regulatory Front (with "whistle-blower immunity")**, to identify and sanction minority Rogues giving the CBM industry a black eye. *All Operators must comply with existing regulations and collectively work to make amends and seek solutions to the aggrieved landowner's issues.*

Operators and Contractors can, should, and I'm sure most will, now, apply their internal industry peer pressure and make operating practice adjustments. Landowners can continue to express their desire for achieving optimal beneficial use of the waters they desire to manage as their lands steward. Regulators need to heed those majority landowner desires and work practicable mitigation to the non-desire folks.

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Regulators can and need to seek to find ways to promote more cooperation vs. the adversarial tone most all Policies/Rules **have propagated** – the *"what is good for me"* or *"my Agency's"* **pigeon-holed vision of how their Rules apply, only**; *all under the guise of universal protectionism w/ a politically correct (PC)-ring to the name of the action – and not considering side effects of those actions/Rules to the big picture, of regional economics and total Range benefits; not considering the majority or drought, etc.*

Case in point – the **Ag Use Protection Policy**. *Who's NOT in favor of protecting Ag Use?*

All-Regulatory Agencies wanting to make Rule changes need to re-examine the existing rules, **first**!! There is plenty of latitude to make **productive changes** so industry can continue the PRB CBM Play. *Killing anything doesn't generally create a viable solution to any problem – often it is called murder, which in most civil societies is shunned. Again, back to peer-pressure – it works!*

All Agencies need to seek input on how to manage these necessary waters AND keep the Play alive. I alone could have written 20 pages of suggestive commentary, regarding known areas of bureaucratic red-tape with inter-disciplinary overlap that needs addressing.

I believe **the CBM industry's** eyes have been opened wide by this potential KILL action before your board, and will be openly **willing to promote all positive and productive Rule-making reform**.

Seek these positive, industry promotional commentaries out – come to Gillette to hear from the affected Peoples – and **they will be given!**

The actions before you now, promote the exact opposite!

Respectfully and very concerned,

Bob Irwin

PS: Happy Valentines Day!!