

Dudley and Marilyn Mackey  
8466 N. Hwy. 14-16  
Gillette, WY 82716

**FILED**

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Terri A. Lorenzon, Director  
Environmental Quality Council

February 14, 2007

Mr. Mark Gordon, Chairman  
Wyoming Environmental Quality Council  
122 W. 25<sup>th</sup> St.  
Herschler Bldg., Room 1714  
Cheyenne, WY 82002

RE: Citizen Petition for Rulemaking-Powder River Basin Resource Council  
Proposed Chapter 1, Section 20, Appendix H-Agricultural Use Protection

Dear Mr. Gordon;

We would like to comment on the WDEQ's proposed Chapter 1, Section 20, Appendix H-Agricultural Use Protection proposed rule and how it will affect our ability to effectively manage our ranching operation.

Water is the lifeblood of any operation and a precious resource in this often drought-impacted region. We have several CBM operators in production on our ranch and have worked closely with them to design and implement a water management plan that will enhance the forage resources for our livestock and the wildlife on our ranch, both now and for the future. Through working with these operators, we have managed to make more effective use of forage and have been able to sustain our ranching operation through some very severe drought years recently. We have worked to contain the produced water on our own lands in order to not impact landowners downstream from us and cause them management problems not of their making.

Reservoirs, pipelines, and watering tanks are all tools we have used to make good, beneficial use of this water. We are also exploring potential irrigation uses to improve carrying capacity, and tree planting to improve wind protection, snow capture, and wildlife habitat.

One of the frustrations we have encountered is the inability to make better, beneficial use of this water resource due to the ever increasing regulatory atmosphere regarding the produced water. We have been limited in our ability to use reservoirs due to water quality concerns by state agencies which has resulted in pastures that have all the water concentrated in one area, while there is no water in the rest of the pasture. Water supplies to cattle have been shut off due to the CBM producer's fear of fines for water over-flowing reservoirs.

We share with you these facts as background to why we do not support the proposed Appendix H rulemaking you are considering. The rule, as it is proposed, would not allow most our existing reservoirs to continue in use due to the 50 year/24 hour requirement. We live on Wildcat Creek


and in our lifetime there have been two lawsuits in this drainage regarding water. One of our downstream neighbors sued over a reservoir that was built on our ranch because it did not allow naturally occurring flood waters to reach the hay fields on his ranch. He won the lawsuit and the reservoir was breached. The second lawsuit involved the same neighbor who sued over CBM water coming down and "negatively" impacting his hay fields. A settlement was reached and now the CBM operators do timed releases of CBM waters in this drainage. Based on this past history, where is the logic and sense in a 50 year/24 hour containment rule and where does it fit in with our water laws of this state? We are of the understanding that naturally occurring rain events are **not** to be held up in order for downstream water rights holders to be able to receive those flood waters. This proposed rule seems to violate that water law principle, as well as make it economically unfeasible to build and use many reservoirs.

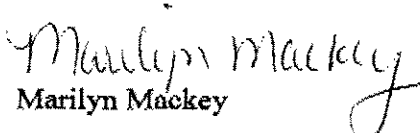
We believe the standards that this rule making will impose on CBM waters will negatively affect our ability to work with operators to make beneficial use of the water on our lands. The proposed standards are so artificially high that we will lose our ability to use the water to improve forage utilization and provide for a well-watered ranch for livestock production. We are also concerned that this rule making will negatively affect current livestock wells in existence and may pave the way for litigation which could shut down many of our existing stock wells and agricultural uses of those wells.

While we don't believe there should be no regulation of this industry, this proposed rule-making will create severe restrictions on landowners and CBM operators being able to work together to develop good, beneficial water management plans which will enhance agriculture operations and wildlife habitat in our state. The flexibility of individual landowners and operators to maximize use of this precious resource should not be lost in over-zealous use of regulations brought on by environmental groups with hidden agendas using a few disgruntled landowners as their cover.

We urge you to **NOT** adopt this proposed rule and to give us flexibility to manage this water resource to benefit our business, the environment and the economy of our state.

Sincerely,

  
Dudley Mackey

  
Marilyn Mackey

cc: Mr. John Corra, WDEQ  
Governor Dave Freudenthal  
Senator John Hines  
Senator Michael Von Flatern  
Representative Erin Mercer  
Representative Tom Lubnau  
Representative Sue Wallis  
Representative Tim Hallinan  
Governor's Coalbed Task Force