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Environmental Quality Council

February 14, 2007  
Wyoming Environmental Quality Council  
122 W. 25th St., Herschler Bldg., Room 1714  
Cheyenne, WY 82002

Dear Chairman Gordon,

I offer the following comments on the Environmental Quality Council's consideration of the WQC, Chapter 1, Surface Water Standards Rulemaking, Docket No. 06-3819.

The EQC should reject rulemaking, specifically the Agricultural Use Protection Policy (AUPP) Section 20 revisions for the following reasons:

1. The WDEQ have not met the burden of proof by providing credible, peer reviewed scientific evidence for the default limits proposed, followed by public review.
2. The consequences to operators and landowners who desire the use of CBNG and/or other sources of produced water far outweigh any as yet unproven benefits by the proposed rule.
3. The WDEQ has repeatedly told legislators, landowners, operators and other regulatory bodies that the AUPP is a "policy" not a rule, with no consequences to those outside of the coalbed natural gas arena. In other words, the WDEQ has changed horses in mid-stream with no notice or opportunity for additional input.
4. Adopting the rule proposed by the WDEQ may provide a "feel-good" answer, but in the end will not alleviate future conflicts. One downstream landowner will have the power to dictate a watershed, depriving those who want the use of produced water.

#### **Burden of proof**

I have personally attended every hearing on the above-mentioned proposed rulemaking and have reviewed all of the information submitted by the WDEQ. Additionally, I have the benefit of having researched and written about CBNG production in the Powder River Basin for my own publication as well as others, both local and regional, for the better part of a decade. I have, in many cases, both first-hand knowledge of historic events and documents retrieved from public information and testimony that led to the discussion and Section 20 revisions.

The evidence relied upon by the WDEQ provides little in the way of standard scientific data collection and robust review by a team of qualified scientists. The WDEQ has chosen instead to base the AUPP on what has been termed "erring on the side of conservatism." The WDEQ should be held to the highest standard of proof and accountability.

#### **Unintended consequences**

By now, the EQC has heard testimony from scores of landowners both in and out of the Powder River Basin who have been or are using produced water in their agricultural operations to their benefit. A statewide rule with general applications will not fit the majority of landowners, and will deny adjudicated water rights to those who depend upon produced water for their operations. Producers given "default limits" in the permit for EC and SAR that CBM produced water typically cannot meet, unless the Producer is willing and can convince the landowner that all reservoirs they discharge into would contain all of the produced water and all of the 50 year/ 24 hour flood event. Or the producer can conduct extensive downstream soil and vegetation and water quality "Section 20" work to essentially prove to WYDEQ that the limits they set in the default are too conservative. WY DEQ has stated that they know the default limits are very conservative. The operator has to do this even if they are never going to see reservoirs overtop except during rain or snow melt events. For example, a reservoir receives CBM discharge 12 stream miles above a location that has either permitted or non-permitted irrigation or someone (anyone) has said that there is a location where natural irrigation (say of alfalfa) is occurring. The water has conductivity of 1800 and has an SAR of 12. The reservoir never overtops during dry conditions but might during rain events. Water from this reservoir never leaves the upstream ranch. The reservoir drains about a square mile of drainage and was put in by a previous landowner back in the 1930s. The CBM company permitted it and brought it up to current standards when the present

landowner agreed to its use for CBM. The permit would renew (or be issued) with an SAR limit at end of pipe of ~6.5 – 7.5 and an EC of ~1330. The produced water can't meet the limits. The reservoir cannot be designed to contain the 50y/24hr flood event plus the produced water. The result is that the landowner cannot utilize the produced water going into that reservoir. As one rancher, David Flitner of Shell Wyoming, observed, the results of adopting the proposed rules to the agricultural community will create chaos. Surely there is a better answer.

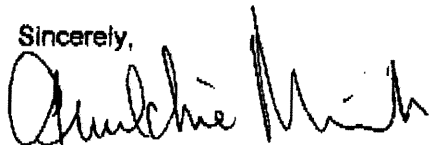
#### **Public input**

The changes and various modifications to the AUPP have been difficult for the public to follow. The request for rulemaking as reported in mainstream media and in public meetings has been confusing and contradictory. The EQC must carefully consider how the proposed rule will play out in other scenarios and in other Basins, and must notice the rule with the appropriate period of review and discussion.

#### **Providing real solutions**

If the goal of the EQC is to provide solutions rather than a feel-good political compromise, one answer might lie with mediation for the minority of landowners who say they are affected. The state has a duty to protect the rights of those to enjoy the benefits of produced water, without the fruitless efforts of rulemaking that will surely be overturned later. Operators have been willing and able to seek communication and solutions for affected landowners, but have been rebuffed. A mediation program could mean a new start in crafting solutions that are beneficial for everyone involved, providing the parties approach the issue from the standpoint of honest cooperation and a desire to see the conflicts resolved.

Sincerely,



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