

EXHIBIT G

September 10, 2004

Governor Dave Freudenthal  
Capitol Bldg, Room 124  
Cheyenne, WY 82002

RE: Chapter 2, Water Quality Rules and Regulations

Dear Governor Freudenthal:

I have reviewed the Chapter 2 of the Water Quality Rules and Regulations and I am writing to express my opposition to their adoption. The revision of the Chapter 2 rules presented an opportunity to modify the NPDES permitting process to address the unique challenges presented by CBM development. This is an opportunity that unfortunately has been passed up. The revised rules perpetuate the misconceptions that have marked a sometimes disastrous approach to management of CBM discharge water by the Wyoming DEQ.

For example, Chapter 2 ignores what has turned out to be one of the greatest concerns created by CBM water discharge – that is, impact to groundwater. Recent studies by the BLM have supported what many scientists as well as landowners have known, that much of the CBM water being “managed” by infiltration is not simply vanishing when it goes out of sight underground; instead, it is having a significant impact on the groundwater quantity and quality, an impact which will have long term effects of unknown magnitude. The DEQ has chosen to ignore these impacts in the Chapter 2 rules, although it obviously recognizes their importance, as it initiated a “policy” for groundwater compliance monitoring June 14, 2004 (enclosed). The rules should address groundwater concerns, with associated enforcement powers.

Appendix H seems to continue some of the worst practices of the old NPDES permitting. Section (a)(i) requires that:

produced water discharged into surface waters of the state shall have use in agriculture or wildlife propagation. The produced water shall be of good enough quality to be used for wildlife or livestock watering or other agricultural uses and actually be put to such use during periods of discharge.

This requirement continues the practice, familiar in CBM effluent permitting, of requiring a showing that the water will be put to beneficial use. This might give you a warm fuzzy feeling about the quality of the water being discharged. Do not be deceived. The

EXHIBIT

tabbles

G



Governor Dave Freudenthal  
Sept. 10, 2004

requirement that a showing be made the water is of a quality to be used for wildlife or livestock watering serves a limited purpose of setting a base quality. It serves no other purpose. The reason is that there is no consideration whatsoever of quantity. Consider the scenario in which CBM wells produce water over a 100-square-mile area where previously there had been no reliable water source. It would be a good thing for a small herd of antelope and a few head of cows to have water available. That's all that's required by the current practice or by these proposed rules. But, will a few tire tanks satisfy the wildlife and cattle needs? What about several 15-acre-foot reservoirs? And what about the water that is being flushed down the drainage and into the mainstem? Many downstream ranchers and irrigators (including the State of Montana) do not welcome the water. It is a simplistic and dishonest standard to say that's okay because there's an antelope up there somewhere that may be thirsty. A quantity parameter must be included in the quality/beneficial use standard in order to have it serve any useful purpose.

Appendix H (d)(ii) appears to be a great big loophole, again relying on the false premise that a "letter of agricultural or wildlife use" from a landowner makes it all okay. It doesn't. One landowner (who stands to gain from royalties or a surface use agreement) cannot vouch for the desirability of the water that has significant impacts far down the drainage beyond his own land.

Finally, I object to these rules because they are long and incomprehensible. Rules should be a communication tool that is accessible to the folks they impact, not just to lawyers hired by industry. These rules create an impenetrable thicket, making government all the more unapproachable. Please hold out for plain English.

I submit these comments on my own behalf, as someone who has worked closely with water discharge issues in Wyoming and who served on the 2003 Task Force to review and evaluate the Wyoming National Pollution Discharge Elimination System Permitting Process.

I have seen the September 3, 2004 letter Steve Jones of the Wyoming Outdoor Council sent you, and I agree with the points he makes.

Sincerely,

DAVIS & CANNON

Kate M. Fox

Cc: John Wagner