

Feb. 16, 2006
Appendix H Hearing

Petitioners' Comments

1. The problem

Too much water

- 380,392 acre feet produced to date
- 74,457 acre feet a year
- 7,150,354 acre feet to come

IENR Report p. 10

- 334,000 cows in Johnson, Sheridan, Campbell and Converse Counties.
- 15 gallons @ day
- 5,612 acre-feet a year consumed by cattle
- Compare to 74,457 acre-feet

ALL Report Prepared for U.S.DOE and Wyoming State Planning office

Jan. 2006

(325,850 gallons = 1 acre-foot)



CBM Discharge Water in SA Creek on Rogers Ranch



**CBM Reservoirs on Dead Horse Creek
Above Barlow Ranch**



Downstream Soil and Vegetation Damage from
CBM Discharge in Dead Horse Creek on Barlow Ranch



CBM Flooding in Spotted Horse Creek
and on Meadows on the West Ranch



CBM Flooding in Spotted Horse Creek
and on Meadows on the West Ranch



West Ranch, Spotted Horse Creek Meadows:
Salts Deposited and Leached from Soil Caused by CBM Flooding



West Ranch: Dead Cottonwood Trees along Spotted Horse Creek from CBM Flooding



Frozen CBM Water Tower from CBM Mister
in Spotted Horse Creek Drainage

2. Legal authority

- DEQ duty to preserve and enhance water resources of the state.
- Quantity is intrinsic part of quality. Courts reject “artificial distinction” between quantity and quality.
- *Petition pp. 8-11*
- **No interference** with jurisdiction, duties or authority of the State Engineer or Board of Control.

DEQ duties

- “prevent, reduce and eliminate pollution; to preserve, and enhance the air, water and reclaim the land of Wyoming; to plan the development, use, reclamation, preservation and enhancement of the air, land and water resources of the state. . . .”
- Wyo. Stat. § 35-11-102.

Wyo. Stat. § 35-11-1104(a)

Nothing in this act:

...

(iii) Limits or interferes with the jurisdiction, duties or authority of the state engineer, the state board of control, the director of the Wyoming game and fish department, the state mine inspector, the oil and gas supervisor or the oil and gas conservation commission, or the occupational health and safety commission.

33 U.S.C. § 1370(2)

It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this chapter. It is further policy of Congress that nothing in this chapter shall be construed to supersede or abrogate **rights to quantities of water which have been established by any State.**

APPENDIX H

WITHOUT CHANGES

Additional Requirements Applicable to Produced Water Discharges from Oil and Gas Production Facilities

...

- (i) The 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 .
- (c)(i) ... The user must have identified exact beneficial use of the water (stock watering, irrigation, etc.) and the history of such use.
- (d)(i) Where discharge water is **accessible to livestock and/or wildlife; meets the effluent limitations ... the discharge will be considered in compliance ...**

Wyoming Pollutant Discharge Elimination System (WYPDES) Program
Basis for Technology-Based Effluent Limits
In
Coal Bed Methane (Natural-Gas) WYPDES Permits

For oil and gas discharges, including CBNG, permits issued from 1974 through 2000 by Wyoming, it was assumed that in the arid west region, the produced water would be used for agricultural or wildlife propagation as long as water quality standards and effluent limitations were met. Historically, documentation related to this requirement was not contained.

While not initially stated in the SOBs for the proposed permits, the permit files contained application information regarding the identification of the user(s) for the discharged water and the potential water quality of the proposed discharge. In December 2001, the WYPDES Program began including statements in the SOBs of each CBNG permit to specifically address how the produced water would be used.

Petition Exhibit 5, pp.4-5

Regulatory Issues

The following is a list of several more specific issues that arise within the current regulatory approach.

CBM water and beneficial use

Wyoming, groundwater appropriation permits “shall be granted as a matter of course, if the proposed use is beneficial, and if the SEO finds that the proposed means, of diversion and construction are adequate.”⁶ In 1997, the SEO declared the production of water for CBM development to be a beneficial use. Water produced from CBM development is considered a non-consumptive beneficial use, similar to water used for hydropower and instream flow in that the full amount of the water remains available for appropriation after the initial use has been completed. **Unless put to beneficial use, produced water from conventional oil and gas development is not regulated by the SEO and remains the regulatory responsibility of the WOGCC (LaBonde, 2005).**

IENR report, p. 35

- **CBM water not put to beneficial use is not regulated by SEO.**

DEQ
Appendix H
“beneficial use”
assumption

SEO
“beneficial use”
determination

- There is no interference with the jurisdiction, duties or authority of the State Engineer or Board of Control.
- The Appendix H amendment would not abrogate any water right, because a water right is by definition a determination of beneficial use.





Clabaugh Ranch Wild Horse Creek CBM Discharge Water Flooding – March 2005