



**WYOMING
OUTDOOR
COUNCIL**

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**STATEMENT OF MICHELE BARLOW
WYOMING OUTDOOR COUNCIL**

Hello. My name is Michele Barlow.

I am here speaking on behalf of Wyoming Outdoor Council. Since 1967, Wyoming Outdoor Council has worked to protect Wyoming's environment and quality of life for future generations. We envision a Wyoming thriving with abundant wildlife, healthy landscapes, clean air and water, and strong communities.

I am from Campbell County, having grown up on the Barlow Ranch southwest of Gillette. My mother and brother still operate that ranch, and I am acutely aware of the devastation caused by coal bed methane development, because I have witnessed it first-hand. I want to concur with those who are here today to tell you their stories of pollution and destruction that are taking place on their ranch lands.

This is a watershed moment, so to speak, for the Environmental Quality Council. This proposed regulation is a small change in Appendix H of Chapter 2 of the Wyoming Water Quality Rules and Regulations. You have the opportunity today to begin to correct some of the terrible policies of the DEQ. You have the opportunity to tell the DEQ to do its job.

It may seem quite comical to you, as it does to me, that this small change in the Appendix H of Chapter 2, could lead industry representatives to assert, as they have here today, that the DEQ would not have jurisdictional authority to act if such a small change in the regulation is adopted. They allege that DEQ does not have the authority to regulate "water quantity" -- because it is the exclusive province of the State Engineer's Office and the Wyoming Board of Control. This is simply not true.

The Wyoming DEQ has the authority to regulate water quality. No one disputes this. What it cannot do, and has never done, is regulate or administer water rights. That is exclusively the province of the State Engineer and the Board of Control. "Water quantity," however, is inextricably linked to the regulation of water quality -- and DEQ regulates matters of water quantity all the time.

The whole idea of a mixing zone is a water quantity issue. A mixing zone is calculated by computing the volume of the pollution discharge, and the volume of the receiving stream. The regulation allows a certain amount of pollution to be discharged into a

stream, and a certain amount of mixing to occur, before a stream can be said to have stabilized. This calculation could not be done without considering water volume. The whole notion of assimilative capacity (the ability of a water body to "assimilate" or handle the volume of water discharged into it), in fact, is based upon the volume of a stream, lake, reservoir or river, and the volume of the discharge to be put into the water body. These are water quantity calculations. But DEQ does not hesitate to regulate in this arena. With regard to assimilative capacity, in fact, DEQ has recently proposed a whole new scheme to put limits on the pollution discharges of CBM operators, based upon the assimilative capacity of the Powder River.

A discharge permit, furthermore, has a volume limit imposed upon it. It always has. "Flow" has always been one of the primary elements that a permittee must test for, and submit records of, on a regular basis, under all WYPDES permits.

What this proposed regulatory change involves is an interpretation of what constitutes beneficial use. The DEQ is required by the Clean Water Act, at 40 CFR Part 435, to not allow discharges of pollution from oil and gas facilities unless it can be beneficially used. This proposed change in the regulation is just a change in the interpretation of what constitutes "beneficial use." There has never been any doubt that DEQ can consider whether or not there is a beneficial use to the pollution discharge. They have done this in the past -- ever since the enactment of the Environmental Quality Act, and they are doing it now, with this very regulation as it is currently written.

So, the jurisdiction of the DEQ to do this should not be questioned. The point of this change in the regulation is to put some real teeth into the concept of "beneficial use." If the discharge is not, in fact, being used beneficially for agricultural purposes, or other purposes, then it should not be allowed. There should not be this huge loophole, that now exists, that if some of the discharge, but not all of it, is being used beneficially, then all of it will be allowed. But DEQ has allowed huge discharges of CBM produced water even though most of the discharge is often not a benefit, but is in fact a detriment, to the ecology, the environment, and to water users such as ranchers, irrigators, and anglers.

By insuring that water being discharged will be actually used, the DEQ can make sure that excess CBM water, and we will have huge volumes of it in the years to come, as this burgeoning boom shows no signs of letting up, will not ruin people's land, crops, environment and lifestyle. DEQ can make sure that only the water that is actually needed for cattle or other livestock, or for wildlife, will be discharged. This will prevent all the additional pollution that threatens to inundate the Powder River Basin from playing havoc with the existing prairie rivers environment. The problem of huge volumes of CBM produced water, as a result of CBM development, faces us now. But the CBM industry has the ability to do this development right. But this change in regulations is needed now to insure that CBM development is done right.

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