

Luke J. Esch # 6-4155
Wyoming Attorney General's Office
123 State Capitol
Cheyenne, Wyoming 82002
(307) 777-6946
(307) 777-3542 Facsimile

Attorney for State of Wyoming
Department of Environmental Quality

FILED

OCT 12 2012

Jim Ruby, Executive Secretary
Environmental Quality Council

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

IN THE MATTER OF THE APPLICATION)
OF STRATA ENERGY FOR THE) EQC Docket No. 12-4803
ROSS ISR URANIUM PROJECT)

**STATE OF WYOMING'S RESPONSE IN SUPPORT OF STRATA ENERGY INC.'S
MOTION TO DISMISS CERTAIN OBJECTIONS**

Respondent, State of Wyoming, Department of Environmental Quality (DEQ), pursuant to Wyoming Rules of Civil Procedure Rule 12(b), hereby supports Strata Energy Inc.'s (Strata) *Motion to Dismiss Certain Objections in Merit Energy's Protest* filed with the Environmental Quality Council (Council) on October 9, 2012. Certain objections raised by Merit Energy Company, LLC, et. al. hereinafter collectively (Merit), should be dismissed in this case because the Council does not have jurisdiction to consider water quantity issues and several of the remaining claims are outside the scope of Wyo. Stat. Ann. § 35-11-406(m). In the interest of promoting an expedient and efficient hearing on the issues that are relevant to the statutory criteria of Wyo. Stat. Ann. § 35-11-406(m), DEQ supports Strata in its *Motion* to dismiss certain objections.

I. The Council Does Not Have Jurisdiction to Consider Water Quantity Issues

Paragraphs 1 through 5 and 10 of Merit's *Protest and Request for Hearing of Merit Energy on Strata Energy Inc.'s Application* relate to the potential for interference with the water resources for its waterflood-assisted oilfield operations near the Strata operations. Merit alleges

that Strata's use of the water will "interfere with, degrade, limit and otherwise change the characteristics of water subject to the prior appropriation by Merit in violation of W.S. § 41-3-906." *Protest*, ¶ 4. These claims are not within the jurisdiction of the Council, but rather are reserved for the State Engineer and State Board of Control. Wyo. Const. art 8, § 2. Among other things, Wyoming law provides a remedy for disputes over groundwater right interference issues. According to Wyo. Stat. Ann. § 41-3-911(b), "any appropriator of either surface or groundwater may file a written complaint alleging interference with his water right by a junior right." The State Engineer is then required to initiate an investigation of the allegations and issue a report with his findings. *Id.*

Any decision by the Council on Merit's claims in paragraphs 1 through 5 and 10, would interfere with the State Engineer's duty and authority to investigate and make determinations regarding interference between two groundwater appropriators in violation of Wyo. Stat. Ann. § 35-11-1105(a)(iii). As noted by Strata, Wyo. Stat. Ann. § 35-11-1105(a)(iii) states that nothing in the Environmental Quality Act can be construed to limit or interfere "with the jurisdiction, duties or authority of the state engineer [or] the state board of control[.]" While arguably Merit's claims on this issue could relate to Wyo. Stat. Ann. § 35-11-406(m)(iii) for compliance with other laws of the State, any determination by the Council on this issue would be venturing into the jurisdiction of the State Engineer. Therefore, DEQ requests that claims 1 through 5 and 10 be dismissed from this case because of the potential to interfere with the jurisdiction, duties and authority of the State Engineer in violation of Wyo. Stat. Ann. § 35-11-1105(a)(iii).

III. Claims 13, 14, 15, and 17 Are Not Appropriate for The Council's Consideration and Do Not Meet the Criteria to Justify Permit Denial

DEQ joins Strata in its *Motion* to dismiss claims 13, 14, 15, and 17. In support of this position, DEQ asserts that Strata's arguments are well supported by law and also argues that with

regard to claims 13 and 17, Merit has failed to allege claims that meet the criteria for permit denial in Wyo. Stat. Ann. § 35-11-406(m). Claims 13 and 17 relate to private matters that do not address any of the criteria listed in Wyo. Stat. Ann. § 35-11-406(m) and are not relevant for the hearing.

WHEREFORE, the Wyoming Department of Environmental Quality hereby requests Strata Energy's *Motion to Dismiss Certain Objections in Merit Energy's Protest* be granted.

DATED, this 13th day of October, 2012.



Luke J. Esch # 6-4155
Sr. Assistant Attorney General
123 State Capitol
Cheyenne, WY 82002
(307) 777-6946
(307) 777-3542 Facsimile
luke.esch@wyo.gov

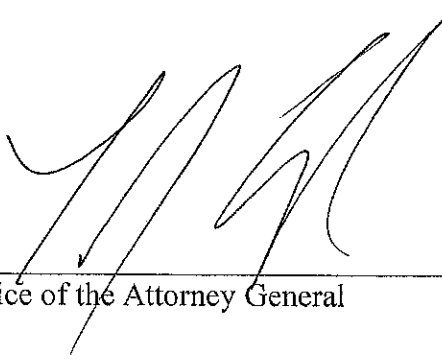
CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of October, 2012, the foregoing *State of Wyoming's Response in Support of Motion to Dismiss* was served by emailing and mailing a true and complete copy to the following attorneys of record:

Environmental Quality Council
122 West 25th Street
Cheyenne, WY 82002
joe.girardin@wyo.gov

Jane M. France
Sundahl, Powers, Kapp & Martin, LLC
1725 Carey Avenue
P.O. Box 328
Cheyenne, WY 82003
jfrance@spkm.org

Mary Throne
Throne Law Office, P.C.
P.O. Box 828
211 W. 19th St., Suite 200
Cheyenne, WY 82003
mthrone@thronelaw.com
wagopian@thronelaw.com



Office of the Attorney General