

FILED

MAR 29 2006

**Terri A. Lorenzon, Director
Environmental Quality Council**

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

IN THE MATTER OF THE APPEAL AND REVIEW OF)
THE DECISION REGARDING THE PROPOSED)
WYOMING POLLUTANT DISCHARGE ELIMINATION)
SYSTEM (WYPDES) PERMIT WY0052761)
(YATES - NEMESIS POD), DATED DECEMBER 17, 2005)

Docket No. 06-3802

DEPARTMENT OF ENVIRONMENTAL QUALITY/WATER
QUALITY DIVISION'S RESPONSE

The Department of Environmental Quality (DEQ)/ Water Quality Division (WQD) by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, hereby responds to Tear Drop Cattle Company, L.L.C.'s (Tear Drop) Petition for Review, Notice of Appeal and Request for Contested Case Hearing and states to the Environmental Quality Council (EQC) the following:

1. The DEQ WYPDES program is without jurisdiction regarding issues related to surface use and/or agreements with private property owners.
2. The DEQ denies Tear Drop's assertion that the volume of water to be produced by Yates' permit will cause accelerated channel erosion on Tear Drop's property resulting in a measurable decrease in forage and livestock production. Yates is required to comply with water quality standards contained in the WQD's rules and regulations, Chapter 1, Section 15, 16, 20 and 23 which limit increases to sediment load and/or turbidity of streams.
3. The effluent limits established in the Yates permit is protective of livestock uses associated with the downstream receiving waters.
4. The DEQ WYPDES permit program does not regulate pollution of groundwater. DEQ's

Groundwater Pollution Control program regulates the pollution of groundwater in Wyoming.

5. The DEQ denies that the entire Dry Creek drainage needs to be studied for cumulative effects prior to issuing permits to Yates. The Dry Creek watershed is scheduled for stakeholder meetings during 2006 together with Barber Creek and Flying E Creek.

6. The DEQ denies Tear Drop's assertions contained in issue number 6 titled "Lack of Access."

7. The DEQ denies each and every allegation not specifically admitted to in this response.

DATED this 29th day of March, 2006.

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY



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CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that the foregoing Response was served by US. Mail, postage prepaid, and addressed correctly, to the following people on the 29th day of March, 2006:

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John S. Burbridge