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

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL)
OF CLABAUGH RANCH, INC.)
FROM WYPDES PERMIT NO. WY0049697)

Docket No. 06-3811

PETITION

Clabaugh Ranch, Inc. petitions the Environmental Quality Council of the State of Wyoming as follows:

1. Name and Address of Protestant and Protestant's Attorney. The name and address of the Protestant is Clabaugh Ranch, Inc., P. O. Box 12, Arvada, WY 82831. The name and address of the Protestant's attorney is Tom C. Toner, Yonkee & Toner, LLP, P. O. Box 6288, Sheridan, WY 82801.

2. Action Upon Which Hearing Is Requested. This is an appeal from the issuance of WYPDES Permit No. WY0049697 by the Administrator of the Water Quality Division of the Department of Environmental Quality to Lance Oil and Gas Company, Inc.

3. Statement of Facts.

a. Clabaugh Ranch, Inc. ("Clabaugh") is the owner of a ranch in Sheridan and Campbell Counties, Wyoming.

b. On March 10, 2006, the Administrator of the Water Quality Division of the Department of Environmental Quality issued WYPDES Permit No. WY0049697 to Lance Oil and Gas Company, Inc. (the "Permit")

c. This permit authorizes Lance to discharge water produced from wells located adjacent to and up gradient from Clabaugh's ranch into Wild Horse Creek which is a tributary to the Powder River.

d. The outfalls are located up drainage from the Clabaugh ranch, and any water discharged under the permit will be discharged onto the Clabaugh ranch.

e. The water that the permit allows Lance to discharge will cross the Clabaugh ranch for several miles.

f. The discharged water will pass through the bottom lands on the Clabaugh ranch through areas that serve as important grazing pastures for Clabaugh livestock.

g. Water uses in existence on and after November 28, 1975 and the level of

water quality necessary to protect those uses is not maintained and protected by the Permit in violation of Ch. 1, §8 of the Water Quality Rules and Regulations of the DEQ.

h. The Permit does not prevent the presence of substances attributable to or influenced by the activities of man that will settle to form sludge, bank or bottom deposits in quantities which could result in significant aesthetic degradation, significant degradation of habitat for aquatic life or adversely affect agricultural use, plant life or wildlife in violation of Ch. 1, § 15 of the Water Quality Rules and Regulations of the DEQ.

i. The Permit does not prevent the presence of floating and suspended solids attributable to or influenced by the activities of man in quantities which could result in significant aesthetic degradation, significant degradation of habitat for aquatic life, or adversely affect agricultural water use, plant life, or wildlife in violation of Ch. 1, § 16 of the Water Quality Rules and Regulations of the DEQ.

j. The Permit does not prevent the waters from containing substances attributable to or influenced by the activities of man that produce taste, odor and color or that would visibly alter the natural color of the water in violation of Ch. 1, § 17 of the Water Quality Rules and Regulations of the DEQ.

k. The Permit allows degradation of Wyoming surface waters to such an extent as to cause a measurable decrease in crop or livestock production in violation of Ch. 1, § 20 of the Water Quality Rules and Regulations of the DEQ.

l. The Permit fails to assure compliance with the turbidity requirements of Ch. 1, § 23 of the Water Quality Rules and Regulations of the DEQ.

m. The Permit fails to establish conditions to provide for and assure compliance with the Clean Water Act, the Wyoming Environmental Quality Act, and the Wyoming Water Quality Rules and Regulations prior to the final administrative disposition of the permit in violation of Ch. 2, §5(c)(ii) of the Water Quality Rules and Regulations of the DEQ.

n. The Permit fails to require that the discharge ensures compliance with the applicable water quality requirements of all affected states in violation of Ch. 2, §9(a)(v).

o. The conditions of the Permit do not provide compliance with applicable requirements of Wyo. Stat. §35-11-302 and the Water Quality Rules and Regulations of the DEQ in violation of Ch. 2, §9(a)(vi) of the Water Quality Rules and Regulations of the DEQ.

p. The Permit fails to include the conditions and limitations that are required in all permits by Ch. 2, Appendix H paragraphs (b)(i)(ii)(v)(vii) and (ix) of the Water Quality Rules and Regulations of the DEQ.

q. The Permit fails to require the permittee to take all reasonable measures to

prevent downstream erosion that would be attributable to the discharge of produced water as required by Ch. 2, Appendix H paragraph (d)(iv) of the Water Quality Rules and Regulations of the DEQ.

r. The Statement of Basis for the permit says that in the judgment of the Water Quality Division of the Department of Environmental Quality, the EPA Effluent Guidelines and Standards for Oil and Gas Extraction Point Source Category (Part 435, Subpart E) is appropriately applied to coal bed methane gas production. 40 C.F.R. Part 435 Subpart E requires that the permittee document agricultural and wildlife uses of produced water and directs that documentation be provided that produced water will be used for agriculture or wildlife during periods of discharge. The Permit does not require that the produced water be used for agriculture or wildlife during periods of discharge in violation of 40 C.F.R. Part 435 Subpart E. The Permit does not require that the produced water have use in agriculture or wildlife propagation and actually be put to such use during periods of discharge and Devon has not documented that the produced water will actually be put to use during periods of discharge in violation of Ch. 2, Appendix H paragraph (a)(i) of the Water Quality Rules and Regulations of the DEQ.


s. The Permit's effluent limits will not protect plant life from adverse effects of the discharge, and water with the quality allowed by the Permit will cause a measurable decrease in crop and livestock production.

t. The Statement of Basis for the Permit states that the discharge shall not cause visible deposits of iron on the bottom or the shoreline of the receiving water, yet the permit itself does not contain this restriction on iron deposits, even though in a letter dated December 1, 2000 to the DEQ from the United States Environmental Protection Agency Region 8, ("EPA"), the EPA said, "Because all waters in Wyoming, including Class IV waters, are to be of sufficient quality to support agricultural uses and are to be free of bottom deposits, each permit shall be sufficiently stringent to allow for irrigation and to protect against bottom deposits of constituents such as iron, which tend to be present in discharges from CBM operations."

4. Request for Hearing. Clabaugh Ranch, Inc. requests a hearing before the Environmental Quality Council and requests that the Council reverse the decision to grant the Permit and grant the Petitioner such relief as he is entitled to by law or regulation.

Dated this 5 day of May, 2006.

Yonkee & Toner, LLP

By: 


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Certificate of Service

I certify that on the 5 day of May, 2006, I served a true and correct copy of the foregoing by depositing the same in the U.S. Certified Mail, return receipt requested, postage prepaid and addressed to:

Lance Oil and Gas Company, Inc.
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Denver, CO 80202-1955

Director, Department of Environmental Quality
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Herschler Building, Room 174
Cheyenne, WY 82002


Tom C. Toner