

BEFORE THE  
ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE APPEAL )  
AND REVIEW OF THE ISSUANCE )  
OF WYOMING POLLUTANT DISCHARGE )  
ELIMINATION SYSTEM (WYPDES) ) Dockets No. 06-3816, 06-3817  
GENERAL PERMITS )  
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**RESPONSE IN OPPOSITION TO WYOMING OUTDOOR COUNCIL  
MOTION TO RECONSIDER ORDER FOR LEAVE TO INTERVENE**

Come now Yates Petroleum Corporation, Marathon Oil Company and Citation Oil & Gas Corp. (“Intervenors”) and hereby file this reply to Wyoming Outdoor Council’s (“WOC”) Motion to Reconsider Environmental Quality Council’s (EQC) Order for Leave to Intervene. Intervenors respectfully request that the EQC deny the relief sought in WOC’s Motion to Reconsider Order for Leave to Intervene. Intervenors reply to WOC’s Response to Petition for Leave to Intervene as follows:

1. Intervenors filed their Petition for Leave to Intervene on July 3, 2007, setting forth the grounds for intervention, demonstrating how they are adversely affected by the action and have a legal right to intervene under the Environmental Quality Act and Wyoming Administrative Procedure Act. EQC tentatively granted Intervenors’ Motion to Intervene on July 23, 2007.
2. A copy of Intervenors’ Motion was mailed via registered mail on July 3, 2007 to WOC pursuant to the Department of Environmental Quality’s Rules of Practice and Procedure. According to the registered return receipt, WOC received the Motion on July 9, 2007.
3. WOC’s Motion for Summary Judgment was not due until July 13, 2007. The oral argument for the Motion for Summary Judgment is scheduled for September 27, 2007. The hearing is scheduled for December 17-19, 2007.
4. WOC objects to the Petition for Leave to Intervene for two reasons: (1) that the Motion was not timely filed; and (2) that Intervenors’ rights will not be adversely affected and that the Department of Environmental Quality adequately represents Intervenors’ rights.

5. With respect to WOC's contention that the Petition for Leave to Intervene was not timely filed, Department of Environmental Quality Rules of Practice and Procedure (R P & P), Chapter II, Section 7 applies to this matter. Section 7(a) provides:

*Any person interested in obtaining the relief sought by a party or otherwise interested in the determination of a proceeding... pending before the Council may petition for leave to intervene in such proceeding prior to or at the date of hearing, but not thereafter except for good cause shown. The petition shall set forth the grounds of the proposed intervention, the position and interest of the petitioner in the proceeding, and if affirmative relief is sought, the same should conform to the requirements for a formal petition. Leave will not be granted unless Council shall determine that the party requesting to intervene is adversely affected by the action, has a legal right under the Environmental Quality Act or the Wyoming Administrative Procedure Act.*

2 RP&P § 7(a) (italics added).

6. Intervenors timely filed their Petition for Leave to Intervene on July 3, 2007 as it was filed prior to the date of hearing. The hearing date in this matter is set for December 17-19, 2007.
7. Furthermore, Intervenors' Motion was filed prior to the court-mandated deadline for WOC filing its Motion for Summary Judgment and prior to the summary judgment oral argument scheduled for September 27, 2007. Intervenors will not delay the scheduled filing dates or hearing date or otherwise jeopardize WOC or DEQ's preparation for this hearing. In addition, in their Petition for Leave to Intervene, Intervenors took care not to raise any issues not alleged in WOC's notice of appeal. Instead, Intervenors only responded to the issues raised by WOC's appeal.
8. WOC incorrectly alleges that Wyoming Rules of Civil Procedure, Rule 24(a) applies to this action. Wyoming Rules of Civil Procedure apply to matters before the Council only "insofar as the same may be applicable and not inconsistent with the laws of the state and these rules [DEQ Rules of Practice and Procedure]." DEQ Rules of Practice and Procedure Chapter II, Section 14(a).
9. The standard in Rule 24(a) relied on by WOC is inconsistent with the superceding rule set forth in the Department's Rules of Practice and Procedure. Chapter II, RP & P Section 7(a) provides that a party

“interested in obtaining the relief sought by a party or otherwise interested in the determination of a proceeding” may seek to intervene if that party is “adversely affected” by the action.

10. While W.R.C.P. Rule 24(a) does not apply in matters before the Council, Rule 19 governing the joinder of indispensable parties does. An indispensable party is a person who “claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may... as a practical matter impair or impede the person’s ability to protect that interest.” W.R.C.P. Rule 19(a).
11. If the general permits are overturned, the permittees’ authority to discharge without further permitting proceedings and, hence produce gas, under the general permits will be denied. This result is no different from the revocation of any other permit or license.
12. Furthermore, intervention at this point does not prejudice WOC or DEQ. Intervenors do not intend to raise any issues not set forth in the WOC motion in this action.
13. With respect to WOC’s contention that the potential Intervenors have not demonstrated an interest in the proceeding, this assertion could not be more incorrect. Intervenors have operations in the Pumpkin Creek, Willow Creek and Fourmile Creek watershed basins which will be regulated by permits issued as the result of this matter.<sup>1</sup>
14. As prospective permittees, the Intervenors have a great deal at interest in whether the general permits are issued. Intervenors have attempted to be involved as stakeholders in the issuance of the general permits, expended a great deal of resources in participating in stakeholder meetings, provided numerous comments and submitted written materials concerning permit conditions proposed and set forth during the stakeholder input process.
15. WOC’s last contention is that DEQ will adequately represent the interests of Intervenors at this stage of the appeal. WOC makes the statement that DEQ “seeks to uphold the watershed general permits that it issued.” Response of Wyoming Outdoor Council to Petition for Leave to Intervene, ¶ 5.

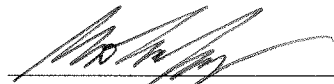
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<sup>1</sup> The clearest example of Intervenors’ rights possibly being affected by this matter is where WOC and DEQ reach a settlement agreement and change the conditions of the General Permits without any discussion with the entities who will be required to comply with the resulting permit. In order to ensure that their rights are protected, Intervenors have sought to become parties in this matter.

16. While it may be likely that DEQ will seek to uphold the permits, there is no guarantee that DEQ will, in fact, defend its own permits and, even if it does, there is no guarantee that the permit possibly resulting from this matter will retain the current permit conditions.<sup>2</sup>
17. In addition, the Department's rule governing intervention explicitly provides that a party may intervene if that person is "interested in obtaining the relief sought by a party." Clearly, the Department's rules contemplate situations where two or more persons may be seeking the same outcome and, yet, may still intervene.
18. Finally, to the extent WOC states that consolidation "would make sense," Intervenors have no objection provided that the scheduling order be revised and additional time for the hearing be provided as appropriate.

WHEREFORE, Intervenors move that the Environmental Quality Council deny the relief sought in Wyoming Outdoor Council's Response to Petition for Leave to Intervene and allow Yates Petroleum Corporation, Marathon Oil Company and Citation Oil & Gas Corp. to intervene pursuant to the Rules of Practice and Procedure.

RESPECTFULLY SUBMITTED this 31<sup>ST</sup> day of July, 2007.



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ATTORNEYS FOR INTERVENORS

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<sup>2</sup> DEQ, as the steward of the environment and representative of the public interest, should balance all interests in moving forward in this appeal. Without participation as a party, Intervenors have no guarantee that DEQ will do so. Also, it is antithetical for WOC to argue that DEQ represents Intervenors' interests when it clearly does not believe DEQ represents WOC's interests.

## Certificate of Service

I certify that on this 31<sup>st</sup> day of July, 2007, service of a true and complete copy of Intervenor's Response in Opposition to Wyoming Outdoor Council's Motion to Reconsider Order for Leave to Intervene in File Nos. 06-3816 and 06-3817 was made upon each party or attorney of record herein as indicated below.

The ORIGINAL and ten (10) copies were filed by Federal Express and also emailing a .pdf version of the same on July 31<sup>st</sup>, 2007 with:

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COPIES were served by Federal Express and emailing a .pdf version of the same on July 31<sup>st</sup>, 2007 with:

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Sharon E. Baker