

JAN 04 2008

Terri A. Lorenzon, Director
Environmental Quality Council

BEFORE THE
WYOMING ENVIRONMENTAL QUALITY COUNCIL

IN THE MATTER OF THE APPEAL AND)	CONSOLIDATED:
REVIEW OF THE ISSUANCE OF WYOMING)	
POLLUTANT DISCHARGE ELIMINATION)	Docket No. 06-3815
SYSTEM (WYPDES) GENERAL PERMITS:)	Docket No. 06-3816
WILLOW CREEK, PUMPKIN CREEK AND)	Docket No. 06-3817
FOUR MILE CREEK PLAN)	

WYOMING OUTDOOR COUNCIL'S PRE-HEARING MEMORANDUM

Comes now the Petitioner in this matter, Wyoming Outdoor Council, by and through its attorney, Steve Jones, and hereby present its Pre-Hearing Memorandum, as follows:

Summation of the Facts

On Sept. 11, 2006, the Wyoming Department of Environmental Quality (DEQ), Water Quality Division (WQD) issued two general permits allegedly in accordance with DEQ Wyoming Water Quality Rules and Regulations (WWQR&R), entitled Willow Creek Watershed General Permit for Surface Discharges Related to Coal Bed Methane Production and Pumpkin Creek Watershed General Permit for Surface Discharges Related to Coal Bed Methane Production hereinafter referred to as the "general permits." These general permits have the effect of relieving the CBM industry from applying for individual discharge permits for discharges of coal bed methane (CBM) produced water within their respective drainages. On the same day, a plan was also issued for the Four Mile Creek drainage, which is similar in its provisions to the two general permits, but still required dischargers to obtain an individual discharge permit from the Department of Environmental Quality (DEQ) for discharges in that latter drainage. The issuance of these general permits represented the culmination of a long process of permit development involving stakeholder meetings that began in January of 2005, and went through five different draft versions of the general permits before a final draft was arrived upon and published by the DEQ on February 16, 2006. Public comments were taken and the public comment period was closed on April 3, 2006. The DEQ then took an

additional three months to evaluate the comments, and attached Fact Sheets to the permits on August 25, 2006.

Petitioner Wyoming Outdoor Council (WOC) has been heavily involved in the development of the general permits. It provided comments during the public comment period for both of the general permits, and Steve Jones, WOC's Watershed Protection Program Attorney served on the stakeholder committee for the Willow Creek Watershed General Permit. Both Wyoming Outdoor Council and Marathon Oil, Yates Petroleum, and Citation Oil and Gas appealed the issuance of the general permits in November, 2006. Marathon Oil, Yates Petroleum, and Citation Oil and Gas also appealed the issuance of the Four Mile Creek Plan.

In September 2007, the above cases were consolidated. Wyoming Outdoor Council presented a Motion for Summary Judgment on legal issues in August of 2007, and the EQC subsequently ruled against that motion. One additional Motion for Summary Judgment was filed by the DEQ in December 2007, and is still pending before the EQC at this time.

The hearing in this matter before the EQC will deal with whether the effluent limits and other provisions of the general permits are protective of the environment of Willow Creek and Pumpkin Creek, as well as the agricultural uses, both existing and potential, for those drainages. Wyoming Outdoor Council will ask that the EQC modify the general permits so as to require more stringent limitations for the effluent limits set forth in the permit, modify it further so that the most stringent effluent applies to the entire length of each stream, and impose stricter erosion controls than currently exist under the general permits.

Legal Issues

The legal issues to be resolved by the EQC include the following:

1. Should the Willow Creek and Pumpkin Creek General Watershed Permits have been promulgated as rules?
2. Does the Environmental Quality Act authorize the issuance of general permits?
3. Does the issuance of the general permits meet the requirements of Chapter 2, WWQR&R?

4. Can the general permits, or any general permit, have widely varying effluent limits for different stretches (stream segments) of the very same stream, where the stream carries the same classification (Class 3 waters of the state) throughout its length?
5. Is the Four Mile Creek Plan ripe for a decision at this time, or are the Petitioners (Marathon, Yates and Citation) required to wait until the issuance of an individual permit in the Four Mile Creek drainage before they can challenge the provision of the plan?
6. Is the issue of determining the flow rate for each permit authorization under the general permits, based upon the assimilative capacity of the Powder River, and the dischargers' share of that assimilative capacity, ripe for decision at this time, or are the Petitioners required to wait until a determination is made by DEQ as to the exact flow rate that the discharger will be limited to before they can challenge that provision of the general permits?
7. Are the on-channel reservoirs authorized by the general permits in fact "treatment works" as defined by W. S. 35-11-103(c)(iv), and as such, are separate permits to construct required for those reservoirs, as required by W. S. 35-11-301(a)(iii)?
8. Do the general permits meet the requirements of Chapter 1, Sec. 20, by protecting all existing and potential agricultural uses, or do the provisions of the general permits violate Chapter 1, Sec. 20, WWQR&R, particularly with regard to effluent limits?
9. Are the erosion control protections set forth in the general permit adequate to protect the drainages damage caused by erosion?
10. Does the DEQ have the legal authority to allow downstream landowners to waive the need for correction and remediation of channel damage caused by discharges authorized by the general permit?
11. Does the DEQ have the legal authority to require effluent compliance points that apply to a particular discharge at locations downstream from the original end-of-pipe discharge, such as irrigation compliance points?
12. Does the DEQ have the legal authority to specify that on-channel reservoirs, that are designed to hold and retain a run-off from a 50-year / 24-hour flood event, can have less stringent discharge standards apply to such reservoirs than either direct discharges to the same stream or discharges to reservoirs that cannot hold and retain such a flood event?

These first three issues listed above were raised by Wyoming Outdoor Council in its Summary Judgment Motion. Nevertheless, the EQC may wish to reconsider them after the close of evidence in this matter, after having heard all the facts.

Witnesses

The Petitioners will call the following witness:

Dr. Larry C. Munn
Soil Science Division
Department of Renewable Resources
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Laramie, WY 82071
Phone: (307) 766-3414
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Dr. Ginger Paige
Assistant Professor
Water Resources
Department of Renewable Resources
P. O. Box 3354
University of Wyoming
Laramie, WY 82071-3354
Phone: 307-766-2200
Email: gpaige@uwyo.edu

Bill DiRienzo
Supervisor, Wyoming Pollutant Discharge Elimination System
Department of Environmental Quality
Water Quality Division
122 W. 25th St.
4th Floor West
Cheyenne, WY 82002
307-777-7781

Dr. Larry Munn is an expert in the field of soil science and pedology and is expected to testify concerning his opinions concerning the application of water to soils in the context of irrigation and also in the context of the natural irrigation of bottomlands and riparian areas of streams. He will discuss in particular the constituents of Sodium

Adsorption Ratio (SAR) and Electrical Conductivity (EC) that are prevalent in coal bed methane produced water and how the soils adjacent to streams that have such CBM water flowing in them are likely to respond to being subjected to the application (whether through natural irrigation, artificial irrigation, or other means -- planned or unplanned) of water will respond. He will also discuss the ability of plants to thrive, or not thrive, in soils that have been affected by CBM produced water discharges. It is expected that Dr. Munn will testify along the lines of his deposition that he gave in this matter on Nov. 20, 2007, and is being made an exhibit in this matter.

Dr. Ginger Paige is an expert in the field of watershed hydrology and soil physics. She is expected to testify concerning the affect CBM produced water can have on streams in the Powder River Basin, and on lands adjacent to those streams. She also served on a Task Force that was assisting the DEQ in drafting an Agricultural Use Protection Policy that has now been put into place by the DEQ. She will discuss her involvement in that task force and her recommendations regarding appropriate protections for agricultural uses in the context of CBM produced water discharges. She is also expected to discuss the differences in watershed management for managed irrigation practices versus unmanaged irrigation practices. She will also discuss the ability of plants to thrive, or not thrive, in soils that have been affected by CBM produced water discharges. It is expected that Dr. Paige will testify along the lines of her deposition that she gave in this matter on Nov. 20, 2007, and is being made an exhibit in this matter.

Mr. DiRienzo has been the primary architect of the DEQ's Agricultural Use Protection Policy, which amplifies the narrative standard for agricultural use protection found in Chapter 1, Sec. 20, WWQR&R. He will be asked to explain the rationale for this policy, and why he believes it is protective of agricultural lands. He will also be asked to explain why he believes the effluent limits found in the general permits are protective of agricultural uses within those permits.

The Petitioners may call the following witnesses:

John Wagner
Administrator, Water Quality Division
Department of Environmental Quality
122 W. 25th St.
4th Floor West
Cheyenne, WY 82002
307-777-7781

Mr. Wagner would be expected to testify, if called, about his reasoning and justifications used in his decision to approve the issuance of the general permits in this case, and why he believes the general permit is protective of the environment and agricultural uses (both existing and potential) occurring within the drainages of the general permits.

Todd Parfitt
Deputy Director
Department of Environmental Quality
122 W. 25th St.
4th Floor West
Cheyenne, WY 82002
307-777-7781

Mr. Parfitt was involved in the initial stages of development of the general permits when he was the head of the discharge permit program for DEQ, Water Quality Division. He also was involved in conceptualizing the assimilative capacity program now being used by the DEQ to determine flow rates for discharges of CBM produced water within the Powder River Basin. He would also be expected to testify along the lines of the deposition he gave in this matter on Oct. 24, 2007.

Additionally, the Petitioners may call any witness listed by the DEQ/WQD, and may also call any witness that may be needed for rebuttal testimony, if allowed.

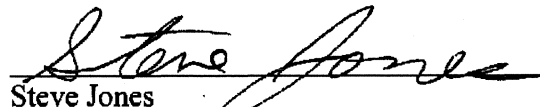
Exhibits

The Petitioners expect to use the exhibits set forth in the attached Exhibit List, attached to this Pre Hearing Memorandum.

Additionally, the Petitioners may use as an exhibit any document listed as an exhibit by the DEQ or by Petitioners Marathon, Yates, or Citation Oil and Gas and may use other evidence or documents developed or discovered after the date of this Pre-Hearing Memorandum.

Dated this 4th day of January 2008.

Respectfully submitted,



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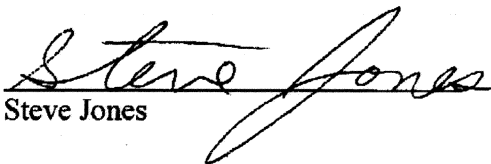
CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing Petitioners' Pre-Hearing Memorandum, and List of Exhibits, by placing a copy of the same in the U.S. mail, postage prepaid, on the 4th day of January, 2008, and by forwarding to them an electronic version of the same, addressed to the following:

Mike Barrash
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Kim McGee
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WYOMING OUTDOOR COUNCIL'S LIST OF EXHIBITS

Exhibit No.	Document	Web Address
1	<i>Water Production from Coalbed Methane Development in Wyoming: A Summary of Quantity, Quality and Management Options</i> , University of Wyoming Ruckelshaus Institute of Environment and Natural Resources, Final Report, December 2005.	
2	<i>Wyoming Pollutant Discharge Elimination System (WYPDES) Program Basis for Technology-Based Effluent Limits in Coal Bed Methane (Natural Gas) WYPDES Permits</i> , attached to April 25, 2005 letter from John Corra to Stephen Tuber, EPA.	
3	Munn, Larry. "Interactions between Coal Bed Methane Product Water and Soils, Vegetation, Agriculture and Riparian Systems in the Powder River Basin." February 8, 2002	
4	Ganjugunte, Girisha K. "Soil Chemical Changes Resulting from Irrigation with Water Co-Produced with Coalbed Natural Gas." <i>Journal of Environmental Quality</i> . (2005)	
5	Horpestad, Abe. <i>Water Quality Technical Report, Water Quality Impacts from Coal Bed Methane Development in the Powder River Basin, Wyoming and Montana</i> . December 10, 2001	http://deq.mt.gov/CoalBedMethane/pdf/H2Omerged3.pdf
6	Munn, Larry. Comments on Wyoming Powder River Basin EIS. February 17, 2003	http://www.powderriverbasin.org/cbm/experts_commentsfeis.shtml#kuipers
7	King, Lyle. "Land Application of Coalbed Methane Waters: Water Management Strategies and Impacts."	

Exhibit No.	Document	Web Address
8	Bauder, Jim. "Quality and Characteristics of Saline and Sodic Water Affect Irrigation Suitability."	
9	Wilkerson, G. V., "Risk assessment methodology using a regional channel erosion potential model."	
10	Gore, James A., May 14, 2002 letter to Paul Beels of BLM.	
11	Raisbeck, M. F. "Water Quality for Wyoming Livestock & Wildlife: A Review of the Literature Pertaining to Health Effects of Inorganic Contaminants."	
12	Raisbeck, M. F. "Water Quality for Wyoming Livestock & Wildlife: A Review of the Literature Pertaining to Health Effects of Inorganic Contaminants," EDEQ Summary Table, last updated July 18, 2007	
13	Wyoming Department of Agriculture Analytical Services Explanation of Standard Potable "Water Supply Series" of Analyses.	http://wyagric.state.wy.us/aslab.aslab.htm
14	Nixon, Lance. "Total Dissolved Solids, Sulfates Pose Risk in Livestock Drinking Water." South Dakota State University, July 2002.	http://agbionews.sdstate.edu/articles/TDS.html
15	Paige, Ginger. December 5, 2005, letter and enclosures to Bill DiRienzo.	
16	Corra, John. July 7, 2005, letter to Joe Russell, Montana Board of Environmental Review.	
17	Suarez, Donald L. "Evaluation of Water Quality Criteria for Rain-Irrigation Cropping Systems," Final Report to EPA June 30, 2006	
18	Munn, Larry C. Resume	
19	Paige, Dr. Ginger Resume	
20	DEQ Agricultural Use Protection Policy (Chapter 1, Section 20)	