

DEC 18 2006

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

Terri A. Lorenzon, Director
Environmental Quality Council

IN THE MATTER OF THE APPEAL)
OF WILLIAM P. MAYCOCK)
FROM WYPDES PERMIT NO. WY0050857)

Docket No. 06-3878

PETITION

William P. Maycock 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 William P. Maycock, P. O. Box 836, Gillette, WY 82716-0836. 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 Department of Environmental Quality's failure to act on Mr. Maycock's request to modify or terminate WYPDES Permit No. WY0050857 and the issuance of a major modification for WYPDES Permit No. WY0050857 by the Department of Environmental Quality to Williams Production RMT Company.

3. Statement of Facts.

a. William P. Maycock ("Maycock") is the owner of a ranch on a drainage known as Barber Creek in Campbell County, Wyoming. Mr. Maycock is a lifelong rancher in Campbell County, Wyoming. His ranch is located in northwest Campbell County. It consists of approximately 11,000 deeded acres, one section of state grazing lease, and 720 acres of land leased from the Bureau of Land Management. Mr. Maycock also leases two section of land from his brother. The ranch has been in the Maycock family since 1907. Mr. Maycock's agricultural operation is a cow-calf operation. He runs 200-300 head of mother cows and about 40 head of sheep.

b. The Barber Creek Drainage crosses Mr. Maycock's ranch about 8½ to 9 stream miles from his east boundary to his west boundary. The South Prong of Barber Creek enters Mr. Maycock's property from the south and has its confluence with Barber Creek on the Maycock Ranch about 4 miles from Mr. Maycock's west boundary and about 1¼ miles from his south boundary.

c. On January 16, 2004, the Administrator of the Water Quality Division of the Department of Environmental Quality issued WYPDES Permit No. WY0050857 to Williams Production RMT Company (the "South Prong Permit"). The South Prong Permit was signed by the Director of the DEQ on January 22, 2004.

d. When Williams submitted its application for the South Prong Permit, Williams represented to the DEQ that there were no downstream irrigators on Barber Creek. Williams made this representation even though there was an existing spreader dike system on the Powder River Ranch downstream from Williams' discharge points. The Powder River Ranch border's the Maycock Ranch on the west, and discharges under the South Prong Permit will flow across the Maycock Ranch onto the Powder River Ranch. This spreader dike system irrigated approximately 315.3 acres of land, and some of the lands irrigated by this spreader dike system included lands owned by the United States. These spreader dikes were constructed in the late 1950's or early 1960's and they were used for irrigation of pasture grasses. The spreader dike system was visible from aerial photographs of the area taken before Williams submitted the application for the permit.

e. The Maycock Ranch has bottomlands along the Barber Creek drainage and the South Prong drainage. These are large flat areas generally without any defined channel which are naturally irrigated by water that flows down the drainages. These bottomlands are important to Mr. Maycock's agricultural operation. Forage grasses also grow in the areas of the Barber Creek and South Prong drainages where there is a defined channel, and these forage grasses are also important to Mr. Maycock's agricultural operation. The soil on Mr. Maycock's ranch where Williams proposes to discharge water is highly erodible.

f. The South Prong Permit authorizes Williams to discharge water produced from wells located adjacent to and up gradient from Mr. Maycock's ranch into on-channel reservoirs within the South Prong watershed which the permit identifies as a tributary of the Powder River.

g. These on-channel reservoirs are located up drainage from the Maycock Ranch, and any water discharged from the on-channel reservoirs will be discharged onto the Maycock Ranch.

h. The water that Williams proposes to discharge from the on-channel reservoirs will cross the Maycock ranch for several miles and will pass through the bottom lands on the Maycock Ranch and will flow down the well vegetated channel bottoms on the Maycock Ranch.

i. The South Prong Permit set an effluent limit for electrical conductivity ("EC") of 7500 and set no effluent limit for sodium adsorption ration ("SAR"). A permit with no SAR effluent limit and an EC limit of 7500 is not protective of irrigation.

j. Jason Thomas of the DEQ admitted in a deposition taken in the appeal of WYPDES WY0053171 (the "Barber Creek Permit") that when the DEQ issued the South Prong Permit, the DEQ believed that there was no irrigation on Barber Creek. He also testified that the South Prong permit had no SAR limit and an EC limit of 7500. He said:

Q. Is that the type of effluent limit you would set for SAR and EC if you knew there was downstream irrigation?

A. If we knew there was downstream irrigation, these are not the type of effluent limits we would include in the permit.

Q. Why is that?

A. They'd simply be too high.

k. After the DEQ issued the South Prong Permit, the DEQ has subsequently attempted to protect the down drainage agricultural uses on Barber Creek and South Prong. When the DEQ issued the Barber Creek Permit, the DEQ recognized that it was necessary to impose limits on the quality of water discharged into the Barber Creek drainage in order to protect downstream agricultural uses. The DEQ imposed an SAR limit of 18 and an EC limit of 3000 even though those limits were not in fact protective. Even more significantly, the DEQ granted permit WY0053899 to Devon to discharge CBM effluent into South Prong, the same drainage as is affected by the South Prong Permit and imposed an SAR limit of 18 and an EC limit of 3000. While these limits are not effective to protect the downstream agricultural lands as this council has already determined in its decision on the appeal of the Barber Creek Permit, the fact that the DEQ found it necessary to impose those effluent limits demonstrates that the effluent limits set in the South Prong Permit are not and were not adequate. The South Prong Permit allows an EC of 7500 and sets no limits on SAR. The DEQ's determination that limits were required for Williams' Barber Creek drainage area permit and Devon's South Prong drainage area permit demonstrates that the permitted discharge under the South Prong permit can only be regulated to acceptable levels by permit modifications or termination.

l. When Williams submitted its application for the South Prong Permit, Williams represented to the DEQ that under normal conditions, all of the water discharged under the permit would be lost due to infiltration and evaporation before it reached the Powder River.

m. Williams sued Mr. Maycock in Civil Action No. 26099 in the District Court of Campbell County in order to condemn an easement to flow its effluent across Mr. Maycock's ranch. In that case, Joe Olson, the Williams employee in charge of its water management plan in this area, testified that Williams was seeking to condemn an easement in order to flow water down the South Prong of Barber Creek and onto the bottomlands and grazing pastures below the confluence of the South Prong drainage and the Barber Creek drainage. Mr. Olson testified that if Williams piped its effluent to the Powder River that several million barrels of water per month would reach the Powder River, but if Williams used its system of containment reservoirs 1/4 to 1/2 of that amount would "actually make it to the river." (See Transcript of Proceedings dated October 19, 2005, p. 56). He also testified that if Williams' produced CBM effluent is discharged into the Powder River, Williams would have to meet different discharge and treatment standards. Thus Williams concedes that despite what it told the DEQ in its permit application for the South Prong Permit, Williams fully expected that large quantities of this effluent will reach the Powder River.

n. Williams produced documents in response to discovery in the appeal to this council of the Barber Creek Permit showing that Williams predicted that its typical discharge down Barber Creek would be 5 c.f.s and that its maximum discharge down Barber Creek would be 10 c.f.s., and Williams is seeking a 20 c.f.s capacity ditch across portions of the grazing pastures and bottomlands on Mr. Maycock's property in the condemnation action. Williams has also presented documents attached to Williams' designation of expert witness in the appeal of the Barber Creek Permit stating that Barber Creek consists of 24.79 stream miles and South Prong consists of 8.075 stream miles. The DEQ and Williams have used a channel loss for infiltrating CBM effluent of .1 cfs per mile. Therefore, it is clear that large quantities of Williams' effluent will reach the Powder River contrary to Williams' representation to the DEQ that under normal operating conditions all of the effluent would be lost before reaching the Powder River.

o. The South Prong Permit authorizes Williams to discharge 2.1 million gallons per day into Barber Creek. In addition, the DEQ had granted the Barber Creek Permit that authorizes Williams to discharge 1.25 million gallons per day into the Barber Creek drainage above the confluence with South Prong after so-called erosion control measures are in place. This council has voted to revoke that permit. The DEQ has also granted Devon Energy permit WY0053899 to discharge 1.24 million gallons per day into the South Prong of Barber Creek when erosion control measures are in place.

p. Large quantities of water will reach the Powder River, yet the South Prong Permit does not establish standards to address that fact. Lance Oil & Gas Company, Inc., which is Williams co-venturer in CBM development, has permit WY0051276 for discharge into Barber Creek. This permit recognizes that there will be discharge into the Powder River and requires that the discharged water meet Montana state line discharge limits (SAR = 5/6.5 and EC = 2000/2500). Williams effluent will be discharging into the Powder River at nearly the same point, yet it is not required to meet any similar standards under the South Prong Permit.

q. In support of its application for the South Prong Permit Williams submitted a water sample taken from Section 21 in Township 50 North, Range 75 West for the Big George Coal which showed an EC of 2120 and an SAR of 17.3. Williams produced a lab report indicating that the Wall Coal water would have an SAR of 14.8 and an EC of 2180 and that the Werner Coal would have an SAR of 16.3 and an EC of 2440. Williams claimed that these water samples were representative of the water that would be produced from the wells that would be discharging to the outfalls under the permit

r. In fact, the water produced from the wells allowed to discharge under the South Prong Permit is of much worse quality than that represented by Williams in its application for permit. Laboratory analyses of water produced from wells discharging to these outfalls have consistently shown the water from the wells discharging to this permit is much worse than represented by Williams at the time of the permit application. For example, the Discharge Monitoring Report Summary for Permit WY0050857 for the period 1/1/05 to 6/30/05 never showed SAR levels as low as 17.3 (the highest level Williams said was representative of the discharge water). The SAR levels shown on the Discharge

Monitoring Report ranged from 19.9 to 25.2. Similarly, while Williams represented that the highest EC level would be 2440, the EC levels reported in the Discharge Monitoring Report ranged from 2670 to 3220. Other laboratory analyses produced by Williams in discovery in the appeal of the Barber Creek Permit show SAR levels as high as 30.4 and EC levels as high as 3780. This information was not available to the DEQ at the time it decided to issue this permit without including effluent limits to protect down-drainage ranchers and agricultural users.

s. A permit may be modified in whole or in part under Chapter 2, §12(d)(ii) when the administrator has received new information which was not available at the time of permit issuance and which would have justified different permit conditions at the time of issuance. Chapter 2, §12(d)(vi) provides for modification when required by the reopener conditions in the permits. The reopener provisions in Part III ¶3 of the South Prong Permit include reopening the permit if the permit does not control or limit a pollutant that has potential to cause or contribute to a violation of a state water quality standard or in order to protect water quality standards in the neighboring states. Chapter 2, §13 states that a permit may be terminated during its term for reasons determined by the department, including, but not limited to: (a) obtaining a permit by misrepresentation or failing to disclose any fact which is material to granting of the permit or to the establishment of terms or conditions of the permit, (b) materially false or inaccurate statements or information in the permit application or the permit or (c) a determination that the permitted activity endangers existing uses of surface waters of the state and can only be regulated to acceptable levels by permit modifications or termination.

t. On June 6, 2006, Mr. Maycock wrote to the DEQ and pointed out the information set out above and requested the DEQ to modify or terminate the South Prong Permit so as to protect down drainage grazing pastures and bottomlands and other lands from adverse impacts of the produced CBM effluent and to protect the water quality standards of neighboring states. The DEQ has failed and refused to act on this request.

u. On September 5, 2006, Williams submitted a request for major modification of the South Prong Permit. Mr. Maycock commented on this proposed modification and pointed out that it would be irresponsible for the DEQ to modify this permit without imposing and SAR effluent limit and reducing the EC effluent limit. Mr. Maycock asked to be advised of the DEQ's action on the major modification.

v. The DEQ issued the requested major modification in a document signed by the Administrator of the DEQ on October 27, 2006 and by the Director of the DEQ on October 29, 2006. When the DEQ issued the major modification, the DEQ left the EC effluent limit at 7500 and imposed no limit on SAR.

w. The DEQ did not notify Mr. Maycock or his counsel of this decision, and they discovered that the major modification was granted only through an independent investigation. The DEQ did not inform Mr. Maycock or his counsel of their decision in order to prevent Mr. Maycock from timely filing an appeal to this council from the major modification of the South Prong Permit.

x. The South Prong Permit fails to maintain and protect the existing water uses and the level of water quality necessary to protect those uses in violation of Chapter 1, §8 of the DEQ Water Quality Rules and Regulations.

y. The South Prong Permit allows degradation of Wyoming surface water to such an extent as to cause a measurable decrease in crop or livestock production in violation of Chapter 1, §20 of the DEQ Water Quality.

z. The South Prong Permit does not require the permittee to take all reasonable measures to prevent downstream erosion that would be attributable to the discharge of produced water in violation of Chapter 2, Appendix H(d)(iv) of the DEQ Water Quality Rules and Regulations.

aa. The South Prong 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.

bb. The South Prong Permit does not ensure compliance with the applicable water quality standards of all affected states in violation of Chapter 2, §9 of the DEQ Water Quality Rules and Regulations.

cc. The South Prong permit fails to provide for and assure compliance with all applicable requirements of the Clean Water Act, the Wyoming Environmental Quality Act, and applicable Wyoming Water Quality Rules and Regulations which have taken effect prior to final administrative disposition of the permit in violation of Chapter 2 § 5 (c)(ii) of the Water Quality Rules and Regulations of the DEQ.

4. Request for Hearing. William P. Maycock requests a hearing before the Environmental Quality Council and requests that the Council reverse the decision to grant Williams the major modification of the South Prong Permit and either order the Department to terminate the South Prong Permit or modify the South Prong Permit to comply with the Water Quality Rules and Regulations and the Environmental Quality Act and to protect down drainage grazing pastures and bottomlands and other lands from the adverse impacts of the produced CBM effluent proposed to be discharged under the South Prong Permit and to protect water quality standards in neighboring states.

Dated this 15 day of December, 2006.

Yonkee & Toner, LLP

By: Tom C Toner

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Certificate of Service

I certify that on the 15th day of December, 2006, I served a true and correct copy of the foregoing by depositing the same in the U.S. Mail, postage prepaid and addressed to Williams Production RMT Company, 300 North Works Avenue, Gillette, WY 82716; Vicci M. Colgan, Senior Assistant Attorney General, 123 Capitol Building, 200 West 24th Street, Cheyenne, WY 82002; Mark Rupper, Holland & Hart, P. O. Box 1347, Cheyenne, WY 82003-1347.

Tom C Toner

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