

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

MAY 09 2008

IN THE MATTER OF THE APPEAL )  
OF PENNACO ENERGY, INC. FROM )  
CONDITIONS IN RENEWAL OF )  
WYPDES PERMIT NOS. WY0039721, )  
WY0039616, WY0048461, WY0052361, )  
WY0048283, WY0039632, WY0048631 )

Terri A. Lorenzon, Director  
Environmental Quality Council  
Docket No. 07-3620

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT**

The Parties in this matter, Petitioner Pennaco Energy, Inc. (Pennaco), Respondent Wyoming Department of Environmental Quality (DEQ), and Respondent Intervener Powder River Basin Resource Council (PRBRC) collectively referred to as "the Parties," present this Joint Motion for Approval of Settlement Agreement, and in support of the Parties' motion and stipulation, state the following:

1. This matter before the EQC concerns the review of certain terms and conditions of seven WYPDES permit renewals issued by DEQ to Pennaco.
2. The WYPDES permits at issue before EQC are WY0039721 (LS Draw); WY0048283 (Kline Draw B); WY0039616 (Railroad); WY0048461 (Hay Creek); WY0052361 (Middle Prong of Wild Horse Creek); WY0039632 (Gibbon Draw); and WY0048631 (Beaver Creek).
3. Pennaco timely appealed the WYPDES permits WY0039721, WY0039616, WY0048461, WY0052361, WY0048283, WY0039632, and WY0048631.
4. The Parties agree that proceeding to a contested case hearing with regard to WYPDES permits WY0039721, WY0052361, WY0048283, WY0039632, and WY0048631 is likely to be burdensome and expensive and unlikely to lead to a mutually satisfactory resolution.

5. The Parties agree that resources presently spent on this litigation with regard to WYPDES permits WY0039721, WY0052361, WY0048283, WY0039632, and WY0048631 can be put to more productive use based upon a mutual agreement as set forth herein.

6. As a part of the agreement, which is marked as Exhibit A and is attached hereto and made a part hereof by this reference, Pennaco will withdraw its appeals with regard to WYPDES permits WY0039721, WY0052361, WY0048283, WY0039632, and WY0048631 contained in EQC Consolidated Docket No. 07-3620.

7. The parties request that Exhibit A be made a part of the order and filed with the EQC, with file-stamped copies for the parties.

8. The Parties agree that they are bound by the terms and conditions contained in Exhibit A and further recognize that with the approval of this Motion by the EQC, Exhibit A becomes an Order of the EQC.

9. The provisions of Exhibit A shall be binding upon and inure to the benefit of the successors and assignees of the Parties hereto, to the extent allowed by law.

10. Each Party enters into this Joint Motion for Approval of Settlement Agreement for the purpose of resolving WYPDES permits WY0039721, WY0052361, WY0048283, WY0039632, and WY0048631 in an appropriate manner without the expense, burden, and uncertainties of litigation and administrative proceedings.

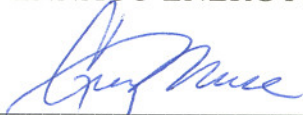
Pennaco Energy, Inc., the Department of Environmental Quality, and Powder River Basin Resource Council respectfully request that the Environmental Quality Council enter an Order under WYO. STAT. ANN. § 35-11-901(a)(ii), WYO. STAT. ANN. § 16-3-107(n) and Chapter I, Section 11 of the DEQ Rules of Practice & Procedure

approving, incorporating, and binding them to this Joint Motion for Approval of Settlement Agreement, Exhibit A.

The signatories certify that they are authorized to bind their respective parties to this Joint Motion for Withdrawal of Appeal and Approval of Settlement Agreement in EQC Docket No. 07-3620.

DATED this 9th day of May, 2008.

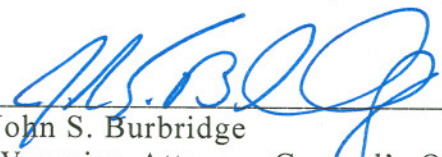
PENNACO ENERGY, INC.:

  
\_\_\_\_\_  
Duane A. Siler  
Patton Boggs, LLP  
2550 M. Street NW  
Washington D.C. 20037  
202-457-6000  
Attorney for Pennaco Energy, Inc.

*Greg Muse  
Attorney In Fact*


5/6/08  
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
John S. Burbridge  
Wyoming Attorney General's Office  
2424 Pioneer Avenue  
Cheyenne, Wyoming 82002  
307-777-7823  
Senior Assistant Attorney General  
Attorney for DEQ/WQD

4-22-08  
Date

POWDER RIVER BASIN RESOURCE COUNCIL

  
\_\_\_\_\_  
Kate M. Fox  
Davis and Cannon  
422 West 26<sup>th</sup> Street  
Cheyenne, WY 82003  
307-634-3210  
Attorney for Powder River Basin  
Resource Council

4/28/08  
Date

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

IN THE MATTER OF THE APPEAL                    )  
OF PENNACO ENERGY, INC. FROM            )  
CONDITIONS IN RENEWAL OF                    )     Docket No. 07-3620  
WYPDES PERMIT NOS. WY0039721,            )  
WY0039616, WY0048461, WY0052361,        )  
WY0048283, WY0039632, WY0048631        )

**SETTLEMENT AGREEMENT**

This Agreement is made as of April 22, 2008, by and among Pennaco Energy, Inc. (Pennaco), Wyoming Department of Environmental Quality (DEQ); and Powder River Basin Resource Council (PRBRC).

WHEREAS Pennaco, DEQ and PRBRC are parties to *In the Matter of Pennaco Energy Inc.*, Consolidated Docket No. 07-3620, pending before the Environmental Quality Council of the State of Wyoming (EQC), in which Pennaco has sought EQC review of certain terms and conditions of seven WYPDES permit renewals issued by DEQ to Pennaco, and in which PRBRC has intervened in support of DEQ;

WHEREAS the WYPDES permits at issue before EQC are WY0039721 (LS Draw); WY0048283 (Kline Draw B); WY0039616 (Railroad); WY0048461 (Hay Creek); WY0052361 (Middle Prong of Wild Horse Creek); WY0039632 (Gibbon Draw); and WY0048631 (Beaver Creek);

WHEREAS Pennaco, on the one hand, and DEQ and PRBRC, on the other hand, wish to resolve five of these administrative appeals without the necessity of continued proceedings before the EQC;

NOW THEREFORE, Pennaco, DEQ and PRBRC agree as follows:

1. Within 5 days after the EQC shall have approved this Settlement Agreement, Pennaco shall dismiss with prejudice the following five matters consolidated herein and the EQC shall have no continuing jurisdiction over said matters: WY0039721 (LS Draw); WY0048283 (Kline Draw B); WY0052361 (Middle Prong of Wild Horse Creek); WY0039632 (Gibbon Draw); and WY0048631 (Beaver Creek) (the Settled Permits).
2. Within 90 days after the EQC shall have approved this Settlement Agreement, Pennaco may submit complete applications to DEQ for modification of WY0039721 (LS Draw) and

WY0048283 (Kline Draw B). WY0048631, WY0039632, and WY0052361 are applicable to Pennaco as currently issued.

3. DEQ shall process any such application for modification as a "major modification," including publication for public comment, and all interested parties shall have the right to (a) comment on any proposed modification proposed by DEQ and (b) seek administrative review before the Environmental Quality Council of the modified permit as issued by DEQ.

4. During the 90 day period within which Pennaco may apply for modification of a permit under paragraph 2, and if Pennaco timely submits such application, until DEQ shall have acted on Pennaco's timely application for modification of effluent limitations as outlined above, any interim effluent limits or water management requirements established in that permit shall remain continued and in full force and effect.

5. Nothing in this Settlement Agreement precludes DEQ/WQD from taking additional enforcement action, including the issuance of a Notice of Violation, Order and/or pursuit of additional penalties, should Pennaco violate this Settlement Agreement, the Wyoming Water Quality Act or applicable rules and regulations in the future.

6. Each party shall bear its own attorney fees and costs, if any, incurred through the date this Settlement Agreement is signed by both parties.

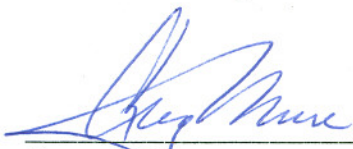
7. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective parties to this Settlement Agreement.

8. Notwithstanding any other language in this Settlement Agreement, the State of Wyoming and WDEQ do not waive sovereign immunity by entering into this Settlement Agreement with Pennaco and the Powder River Basin Resource Council, and specifically retain all immunity and all defenses available as sovereigns under state and federal law.

9. This Settlement Agreement is not binding on the Parties until the date the last signature is affixed hereon.

DATED this 22nd day of April, 2008.

PENNACO ENERGY, INC.:

By:   
\_\_\_\_\_  
Gregory Muse  
Attorney-in-Fact

5/6/08  
Date

APPROVAL AS TO FORM:

Duane A. Siler  
Duane A. Siler  
Attorney for Pennaco Energy, Inc.

5/5/08  
Date

STATE OF WYOMING, DEPARTMENT OF ENVIRONMENTAL QUALITY

By: John Wagner  
John Wagner, WQD Administrator

5/8/08  
Date

By: John V. Corra  
John V. Corra, DEQ Director

5/8/08  
Date

APPROVAL AS TO FORM:

John S. Burbridge  
John S. Burbridge  
Senior Assistant Attorney General  
Attorney for DEQ/WQD

4.22.08  
Date

POWDER RIVER BASIN RESOURCE COUNCIL

By: Robert LeResche  
Robert LeResche  
Chairman

25 April 2008  
Date

APPROVAL AS TO FORM:

Kate M. Fox  
Kate M. Fox  
Attorney for Powder River Basin  
Resource Council

4/22/08  
Date