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FILED

JAN 25 2008

Terri A. Lorenzon, Director
Environmental Quality Council

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

IN THE MATTER OF THE APPEAL OF)
PENNACO ENERGY, INC. OF)
CONDITIONS IN REVEWAL OF) Docket Nos. 07-3616
WYPDES PERMIT NOS. WY0039721,) 07-3617, 07-3618
0039616, 0048461, 0052361 AND) 07-3819, and 07-3620
0048283)

**POWDER RIVER BASIN RESOURCE COUNCIL'S OPPOSITION TO JOINT
MOTION TO STAY PROCEEDINGS**

Powder River Basin Resource Council [PRBRC] opposes the joint motion to stay proceedings pending settlement discussions of Petitioner Pennaco Energy, Inc. [Pennaco] and Respondent Wyoming Department of Environmental Quality [WDEQ]. As grounds for its opposition, PRBRC states as follows:

PRBRC filed its petition for leave to intervene in Consolidated Appeals captioned above on December 21, 2007 and that matter is set for hearing January 29, 2008 before the Wyoming Environmental Quality Council [EQC]. PRBRC's Petition for Leave to Intervene and its January 22, 2008 Reply to Petitioner's opposition thereto make it clear that PRBRC's members (both those identified in the petition for leave to intervene and its

members at large) have a significant stake in the outcome of these appeals, and staying proceedings prior to PRBRC's intervention would simply shut PRBRC out of the resolution of the important issues raised by these appeals.

Pennaco seeks modification of effluent limitations, modification of the points of compliance, a determination that WDEQ's Agricultural Use Policy is not applicable to permit renewals absent a showing that existing damages are harming to humans or animals, a determination that WDEQ's Agricultural Use Policy cannot be implemented unless it is first adopted as a rule, and modification of impoundment requirements. Docket No. 07-3616, Notice of Appeal and Petition for Hearing at 2-4; Docket No. 07-3617, Notice of Appeal and Petition for Hearing at 2-4. The PRBRC members identified in the petition for intervention (Ken Clabaugh, Bob Spellman, and Bill and Marge West) are the landowners upon whose property the discharges under the permits at issue are made, are downstream irrigators, or both. These members have a significant stake in the quality of water discharged upon or flowing across their property, the manner in which that quality is protected and are directly affected by the discharges to be made under these permits.

PRBRC has a vital interest in the resolution of this matter, whether by settlement or by case hearing. Pennaco and WDEQ's joint motion to stay the action and settle it before PRBRC is allowed to intervene would deprive PRBRC of the protections in the Environmental Quality Act [EQA] (WYO. STAT. § 35-11-801) and WDEQ regulations (WDEQ, Water Quality Rules and Regulations, Chapter 2, Section 15) which allow interested persons to provide input and participate in the determination of WYPDES permit conditions. Granting the motion to stay before PRBRC can intervene would cut

out those members of the public most affected by Pennaco's discharges. Additionally, whether and how WDEQ's Agricultural Use Policy is implemented affects PRBRC's large membership. Deciding these questions in the context of "settlement negotiations" that does not include those members of the public most affected by such negotiations is inappropriate and contrary to the public notice policies of the EQA and WAPA. See WYO. STAT. § 16-3-103 (requiring notice for rulemaking actions). If new information has come to light that will have an important impact on the effluent limitations, points of compliance and the manner in which WDEQ's Agricultural Use Policy is implemented for the discharges subject to these permits, that information should be disseminated to all parties with an interest in the outcome of these appeals.

WHEREFORE, PRBRC requests that Pennaco and WDEQ's Joint Motion to Stay Proceedings Pending Settlement Discussions be denied. In the alternative, PRBRC requests that the EQC grant the motion to stay after allowing PRBRC to intervene. Should the EQC grant the Joint Motion to Stay without first granting PRBRC leave to intervene, PRBRC requests that the EQC order that the permits consolidated in this appeal as modified by any settlement agreement between Petitioner and Respondent be renoticed for public comment in accordance with WDEQ's rules and regulations.

RESPECTFULLY SUBMITTED this 25th day of January, 2008.



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ATTORNEYS FOR INTERVENOR

Certificate of Service

I, J. Mark Stewart, hereby certify that on this 25th day of January, 2008, an accurate copy of the foregoing Opposition to Joint Motion to Stay Proceedings was served via e-mail and US Mail to the following:

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