

Meeteetse Conservation District

P.O. Box 237 • 2103 State Street
Meeteetse, WY 82433
(307) 868-2484 • mcd@tctwest.net

January 16, 2007

Wyoming Environmental Quality Council
Herschler Building
122 W. 25th St., Rm. 1714
Cheyenne, WY 82002.

*Rec'd
1-18-07*

Re: Petition for Rulemaking, filed by the Powder River Basin Resource Council

Dear EQC:

The Meeteetse Conservation District Board of Supervisors (MCD), representing the citizens that elected it*, hereby further registers its opposition to the cited Petition.

This petition is an unwise attempt to create a statewide "one size fits all" rule in response to a local situation.

This petition should be killed immediately following the January, 2007 hearing.

The MCD presents the following comments which are particularly relevant to your action on this Petition. These comments are similar to some of those filed with the Wyoming DEQ/WQD regarding the Chapter 1, Section 20, Agricultural Use Protection Policy.

These comments are derived from those which were developed at a properly noticed public meeting convened by the Hot Springs Conservation District.

The EQC must follow Wyoming Statute 35-11-302 requiring the State to consider and evaluate the economic impacts of any proposed rule or regulation:

35-11-302. Administrator's authority to recommend standards, rules, regulations or permits.

(a) The administrator, after receiving public comment and after consultation with the advisory board, shall recommend to the director rules, regulations, standards and permit systems to promote the purposes of this act. Such rules, regulations, standards and permit systems shall prescribe:

(vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board shall consider all the facts and circumstances bearing upon the reasonableness of the pollution involved including:

(A) The character and degree of injury to or interference with the health and well being of the people, animals, wildlife, aquatic life and plant life affected;

(B) The social and economic value of the source of pollution;

(C) The priority of location in the area involved;

(D) The technical practicability and economic reasonableness of reducing or eliminating the source of pollution;

The MCD insists that EQC policy must provide the flexibility to develop and utilize future water resources associated with mineral development, whether or not that development is "traditional" production or "CBM" production.

In the Big Horn Basin, water quality that would be unsuitable for discharge under the proposed Appendix I is currently being discharged by industry and is being used by agriculture.

Regarding EQC's intent to implement standards and rules and §35-11-302(a)(vi)(B) and (D):

Discharged water is so valuable that agricultural producers file with the State Engineer's Office in order to obtain adjudicated water rights on the discharged water.

Respectfully submitted for the Meeteetse Conservation District Board of Supervisors,



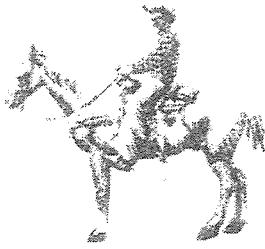
Steve Jones
Resource Management Coordinator
Meeteetse Conservation District

* FROM: W.S. § 11-16-103 Legislative declarations and policy

(a) It is hereby declared that the farm and grazing lands of Wyoming are among the basic assets of the state; that improper land use practices cause and contribute to serious erosion of these lands by wind and water; that among the consequences which would result from such conditions are the deterioration of soil and its fertility and the silting and sedimentation of stream channels, reservoirs, dams and ditches; that to conserve soil, and soil and water resources, and prevent and control soil erosion, it is necessary that land use practices contributing to soil erosion be discouraged and that appropriate soil conserving land use practices be adopted.

(b) It is hereby declared to be the policy of the legislature to provide for the conservation of the soil, and soil and water resources of this state, and for the control and prevention of soil erosion and for flood prevention for the conservation, development, utilization, and disposal of water, and hereby to stabilize ranching and farming operations, to preserve natural resources, protect the tax base, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect public lands, and protect and promote the health, safety and general welfare of the people of this state.

The above, being the charge and direction of the Wyoming Legislature for all Conservation Districts within the State of Wyoming, the MCD Board of Supervisors' responsibility to the cooperators of the District is measurable and accountable by the actions the MCD takes to accomplish the direction given by the Wyoming Legislature. The District Board of Supervisors, an elected body, and a local government, is the local guide to the management of lands within the jurisdiction of the MCD and is accountable to the citizens of the District.



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January 15, 2007

Wyoming Environmental Quality Council
Herschler Building
122 W. 25th St., Rm. 1714
Cheyenne, WY 82002.

Re: Petition for Rulemaking, filed by the Powder River Basin Resource Council

Esteemed Council:

The Meeteetse Conservation District Board of Supervisors (MCD), representing the citizens that elected it*, hereby again registers its opposition to the cited action and summarily reiterates its comments presented at the hearing that you convened in Basin, Wyoming on November 2, 2006, and that;

This petition should be killed immediately following the January, 2007 hearing.

This petition is an unwise attempt to create a statewide rule in response to a local situation.

The petitioners' own exhibits and the comments that the Petitioners have solicited in its support clearly document that local soil/water interaction, not statewide conditions control whether or not damage from discharged water occurs or may occur.

From the *Notice of Proposed Rulemaking Before The Environmental Quality Council*
By the *Environmental Quality Council*, <http://deq.state.wy.us/eqc/Docket/05-3102>

"A new Appendix I will contain requirements applicable to produced water discharges from CBM with more stringent limits on discharges that cause, or have the potential to cause, unacceptable water quality, and would limit the pollution caused by such discharges. Appendix I would also contain more stringent limits for sulfates, TDS/SC, and barium. This rule revision is being proposed to provide for regulation of the unique environmental issues presented by CBM produced waters..."

Yet, The Petitioners' own exhibits show that proposed limits on certain constituents are unrealistically low. (Example, this excerpt from Exhibit 19: "Sulfate imparts a bitter taste to the water, but animals can acclimate to it... levels up to 1500 ppm produce slight effects on livestock and levels of 1500 to 2500 produce temporary diarrhea.")

It is absurd to consider regulating discharge from a source labeled "Coal Bed Natural Gas", Coal Bed Methane", or "CBM" any differently than discharge from a source labeled "traditional oil and gas facilities".

In the Big Horn Basin, water quality that would be unsuitable for discharge under the proposed Appendix I is currently being discharged by industry and is being used by agriculture.

This discharged water is so valuable that agricultural producers file with the State Engineer's Office in order to obtain adjudicated water rights on the discharged water.

Respectfully submitted for the Meeteetse Conservation District Board of Supervisors,



Steve Jones
Resource Management Coordinator
Meeteetse Conservation District

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Rec'd
1-18-07

Mr. Mark Gordon, Chairman, and
Members, Environmental Quality Council:

I thank you for allowing me the opportunity to offer and present some very factual and relevant property tax revenue information, in the public comment format, as you consider the Citizens Petition submitted to you by the Powder River Basin Resource Council requesting a rule change, of the permitting process for water discharge related to coal bed natural gas production. Coal bed natural gas production tax revenue has become a significant source of revenue for the local governments, within the Powder River Basin as well as for The State of Wyoming. My comments presented to you today I will quantify that contribution, with focus on Johnson and Sheridan County.

Who am I?

My name is Ken Kerns, born and raised in rural Sheridan County, having spent my entire life associated with the Ranching Industry, and my residence today. I do not own or have any interest in any developed or undeveloped mineral production. My interest in this matter is residual, as a former Sheridan County Commissioner.

I served 12 years, on the Board of the Sheridan County Commissioners from 1987 to 1998. I became very enlightened in the process of local government,

to provide the basic government services, supporting the health and general welfare of the residents of Sheridan County. Obtaining sufficient revenue from the available revenue resources, state, federal and local, with a declining property tax base in Sheridan County, coupled with operational cost inflation, Sheridan County could never fill the service needs with the revenue funds available. Johnson County, was experiencing a similar shortfall. Attempting to close the gap, the residents of both Counties, enacted the general purpose optional sales tax. Sheridan County voters also approved the optional specific sales tax. The residents of Johnson County created special property taxing districts to assist in providing funding for basic services.

Following my terms as a County Commissioner, I watched with interest and perhaps even envy, as the assessed valuation of Sheridan County began to grow, because of the rapidly expanding coal bed natural gas development in the Powder River Basin and in Sheridan County. As is the case with many a recovering politician, I was not wanting to leave Sheridan County Government totally, so, I became a Local Government Affairs Consultant.

In May, of this past year, the Coal Bed Natural Gas Alliance (CBNGA) of Denver, Colorado contracted my services to research, record and report the historical and current property tax revenues generated within Sheridan and Johnson County. The CBNGA has asked me to present to you today, as a

part of this public hearing, a very brief summary of the property tax revenue data that was generated from that work. The purpose of this information is to provide you a written record of the significant property tax revenue the Coal bed Natural Gas Industry is contributing to assist local government in providing basic governmental services for all residents of Sheridan and Johnson County. My report today, will focus upon mine product taxes, ad valorem taxes, that are assessed by the State Department of Revenue, and County Assessor. These revenues are collected and distributed to local taxing entities, by the respective County Treasures. Due to time constraints, Severance taxes, collected by the Wyoming Department of Revenue, Federal and State Mineral Royalties, collected by Federal and State. Governments., both of which are quite significant, will not be part of this report They are identified in my reports to the CBNGA.

The first two charts, Chart 1, Johnson County, and Chart 2, Sheridan County, will graphically show you the remarkable property tax valuation increases in both Sheridan and Johnson County due to the development and production of coal bed natural gas.

CHART 1. Johnson County Taxable Valuation:

The historical range for all properties, from 2000 to 2006, and mineral production of ongoing oil production, condensate gas, bentonite and gravel, is reflected in this chart. Coal bed natural gas did not arrive on the valuation assessment until 2003. From 2000 to 2006, the total assessed valuation of Johnson County increased by 471%

CHART 1:

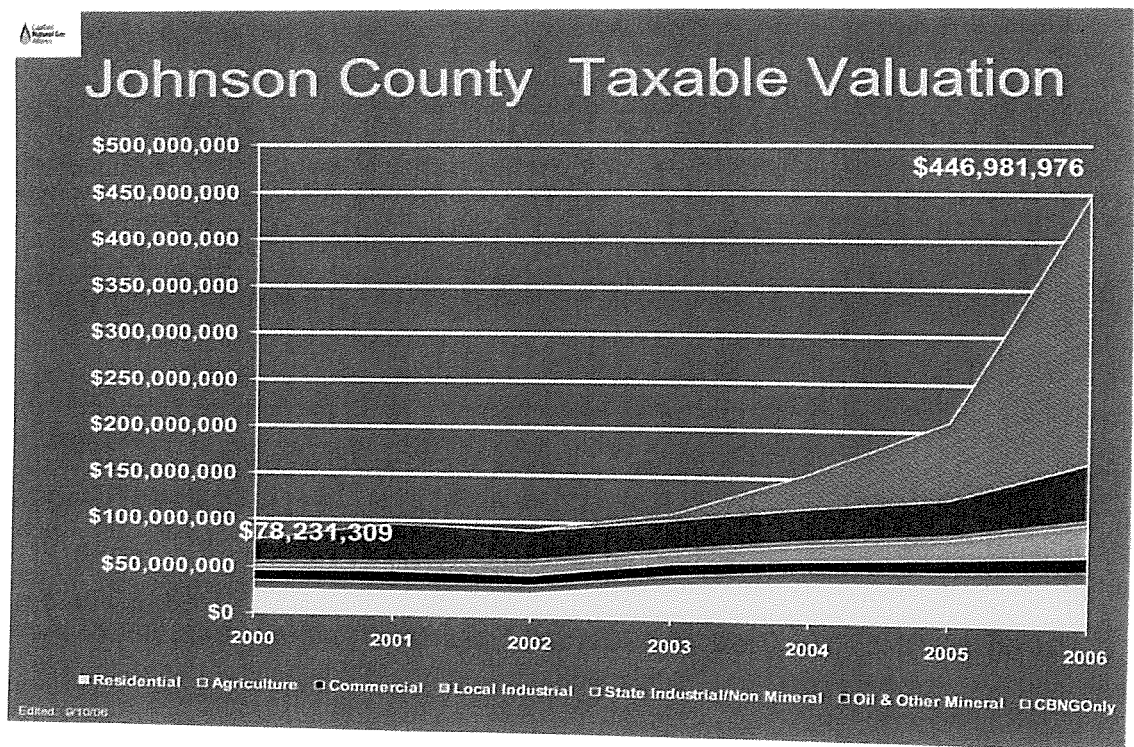


CHART 2: Sheridan County Taxable Valuation

The historical range of the assessed valuation of Sheridan County increased by 281% from year 2000 to 2006. During this period of time, taxable mineral production had no significance, until coal bed natural gas arrived on the scene in 2001.

CHART 2

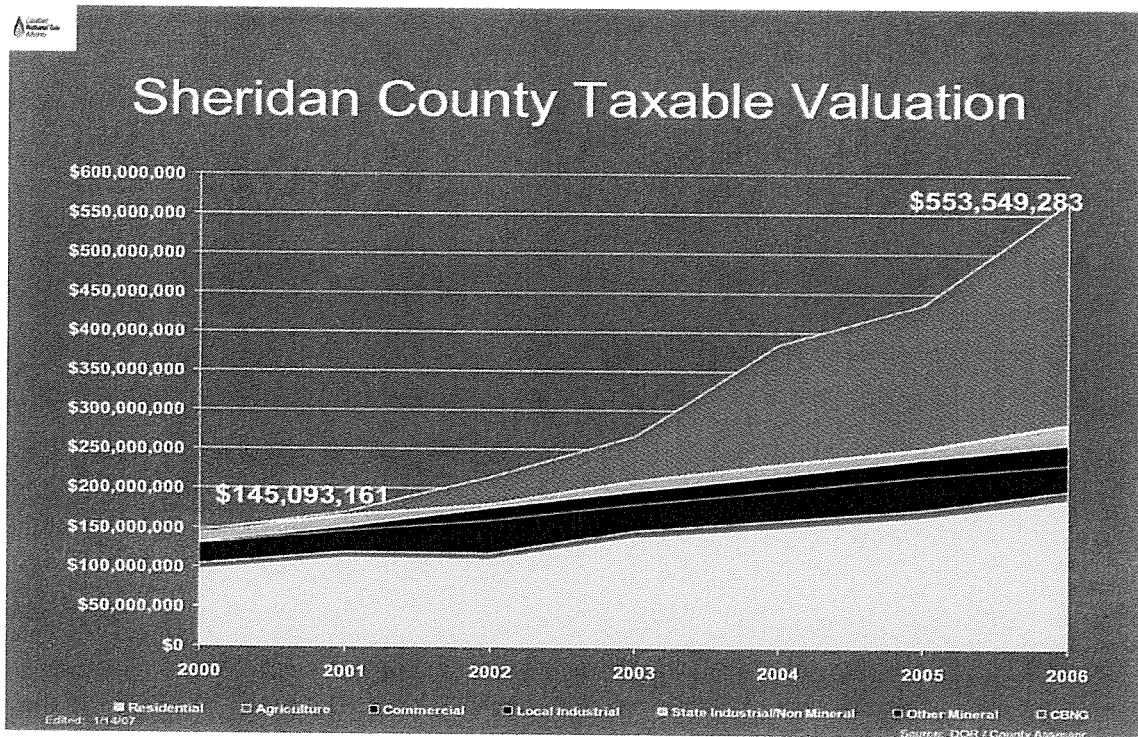


CHART 3: Johnson County, Revenue and Source

Consequently, with this dramatic increase of taxable value in both Johnson and Sheridan County, due to the production of coal bed natural gas, the associated revenue increases to the local taxing entities and the source of this revenue is reflected below, comparing the year 2000, with 2006. In 2006 coal bed natural gas production accounted for 66% of the Johnson County, tax base

CHART 3:

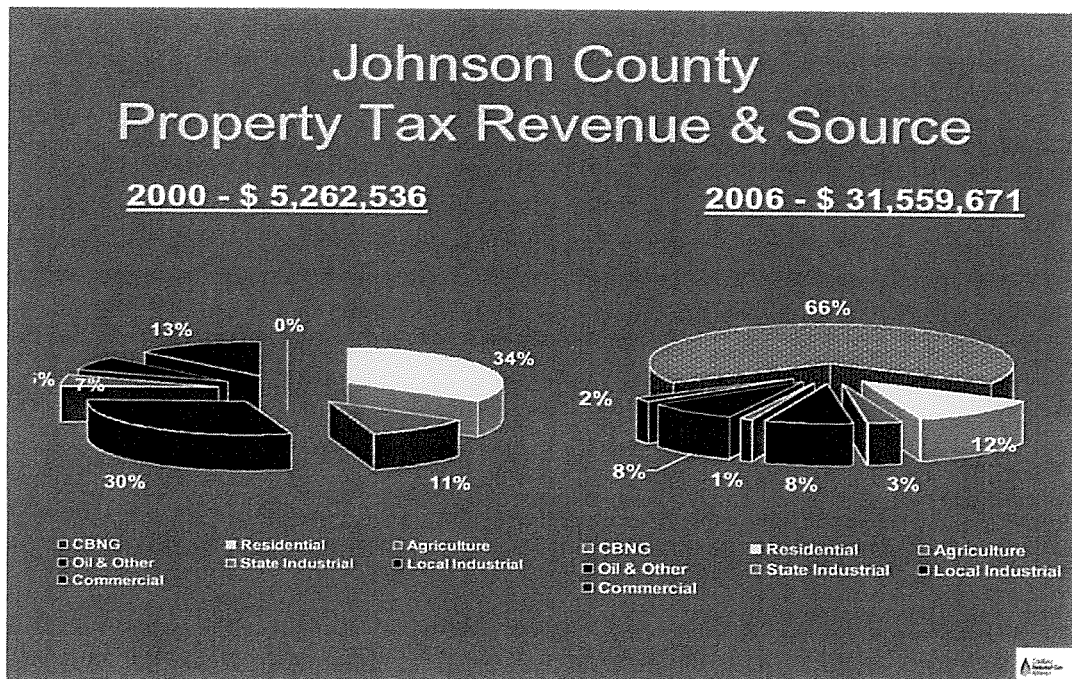
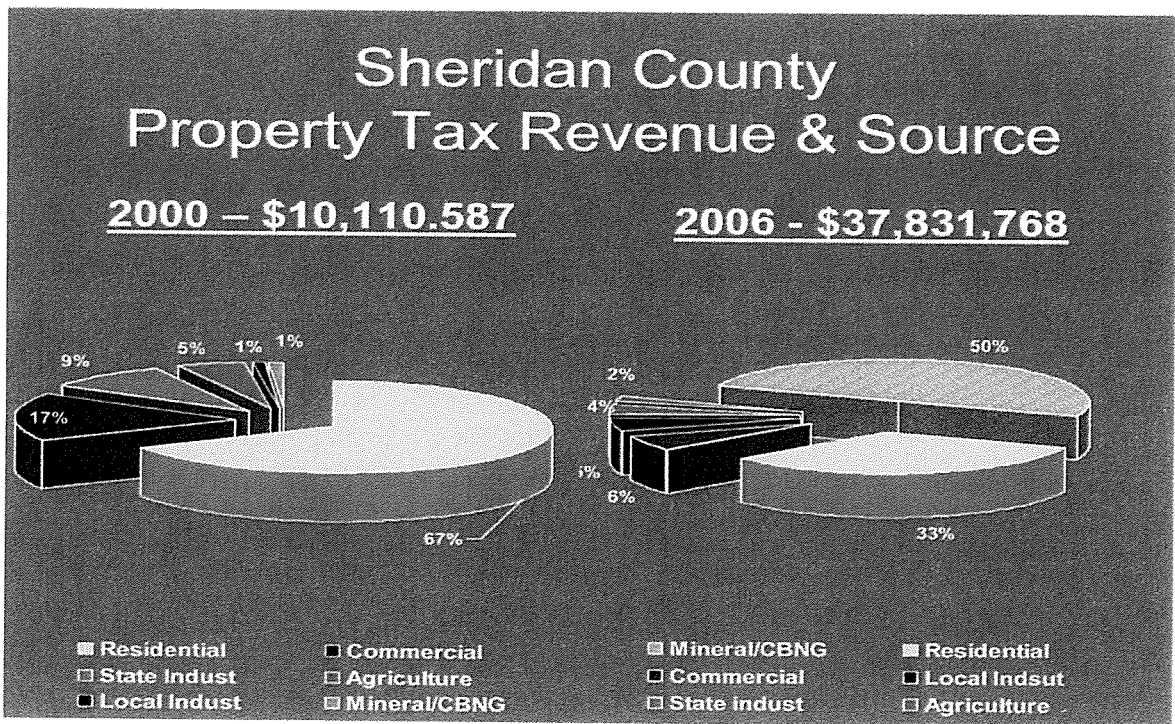


CHART 4: Sheridan County , Property Tax Revenue and Source

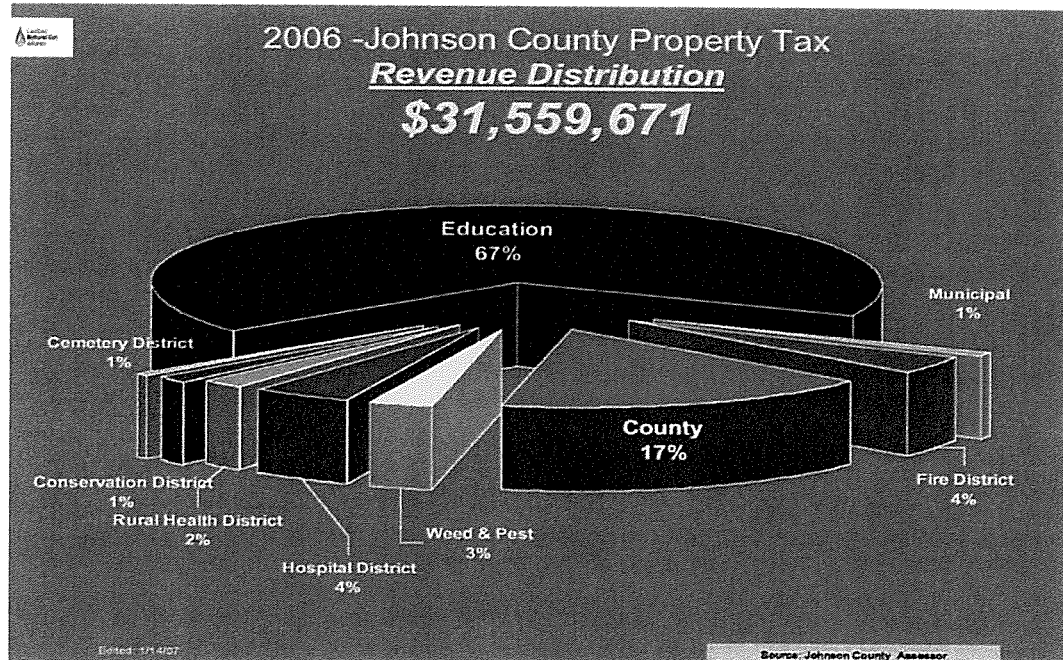
Consequently, with this dramatic increase of taxable value, in Sheridan County, the associated revenue increases to the local taxing entities and the source of this revenue is reflected in the below chart. (Comparing tax year 2000, with tax year 2006, coal bed natural gas production accounted for 50% of the Sheridan County, tax base.

CHART 4:



Property tax revenue is distributed by the County Treasure according to the mill levy, as certified by the County Levy Board. This chart graphically shows the percentage of total revenue distribution to the various entities from the total amount of revenue collected in **Johnson County**. The various special taxing districts created by the Johnson County residents are reflected in this chart.

CHART 5:



These special districts, Fire, Hospital, Rural Health, Conservation and Cemetery, received 12 % of the total property tax revenue collected in 2006, or approximately \$3,078,160. There is, by statute, a maximum mill levy these special districts are allowed to assess..

In Johnson County, listed below shows, with the comparison of mills levied, revenue received, comparing revenues prior to and after coal bed natural gas development, year 2000/2006 with revenues collected. Those highlighted are of special interest, dealing with health and safety services.

2000- \$78,231,309

2006- \$446,981,976

↑ Up 471%

Entity	2000 Levy	2000 Revenue	2006 Levy	2006 Revenue	% Increase
County GF	7.730	\$ 604,728	10.706	\$4,785,389	↑ 691
Fair	.793	62,083	.301	134,543	↑ 116
Library	2.646	207,000	.779	348,199	↑ 68
Museum	.831	65,010	.214	95,654	↑ 47
Weed & Pest	2.000	156,462	2.000	893,964	↑ 471
Rural Fire#1	3.000	76,481	3.000	981,989	↑ 1183
Rural Fire -PR	1.483	51,104	3.000	270,149	↑1385
Cemetery	.663	51,867	.415	185,498	↑ 262
Hospital	3.000	234,694	3.000	1,340,946	↑ 471
Rural Health (911)	1.780	139,252	1.360	607,895	↑ 336
Conservation	1.000	78,232	1.000	446,982	↑ 471
St. Foundation	12.000	938,766	12.000	5,363,784	↑ 471
County Foundation	6.000	469,388	6.000	2,681,892	↑ 471
School Operation	25.000	1,955,783	25.000	11,174,549	↑ 471
G.O. School Bonds	0.000	0	4.500	2,011,418	
Buffalo	8.000	140,742	8.000	226,416	↑ 60
Kaycee	8.000	5,962	8.000	10,405	↑ 74
TOTAL REVENUE		\$5,262,536		\$31,559,671	UP 499%

Likewise, charts 7 & 8, display the property tax revenue tax distribution in Sheridan County.

CHART 7

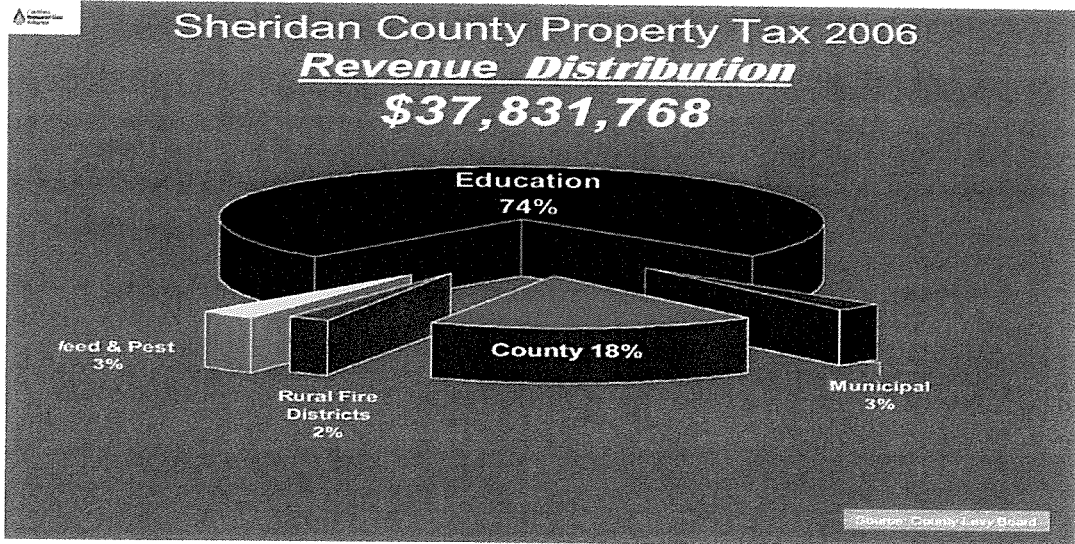


CHART #8

Sheridan County
Property Tax Revenue – excluding education

Entity	2000 Revenue	2006 Revenue	Increase (Decrease)	% Change
County GF	\$1,741,117	\$5,103,954	\$3,499,837	>281%
Fair	\$192,357	\$305,000	\$112,634	>58%
Library	\$465,455	\$1,035,000	\$569,545	>122%
Airport	\$89,902	\$195,000	\$105,098	>116%
Hospital	\$150,000	\$110,000	(\$40,000)	<26%
Rural Fire	\$132,041	\$775,339	\$643,328	>487%
Weed & Pest	\$290,186	\$1,129,326	\$839,140	>289%

As was pointed out earlier in this presentation, the educational community, receives better than 70% of the property tax revenue within the distribution process. For purposes of illustration, let us look at the revenue increase for education, as the assessed valuation of the two counties rise. It is very important to recognize the contribution Johnson County is now making to the State School Foundation Fund. As you can readily see it is projected Johnson County School District #1, will soon contribute more revenue to the State Foundation Fund than is returned for basic education. As more school districts become contributors it allows the Governor, the Legislature, and The State Board of Education, latitude to be more innovative, providing solid education opportunities for the youth of Wyoming. A prime example of this, is the Hathaway Scholarship Trust Fund, funded with coal bonus money.

CHART 9

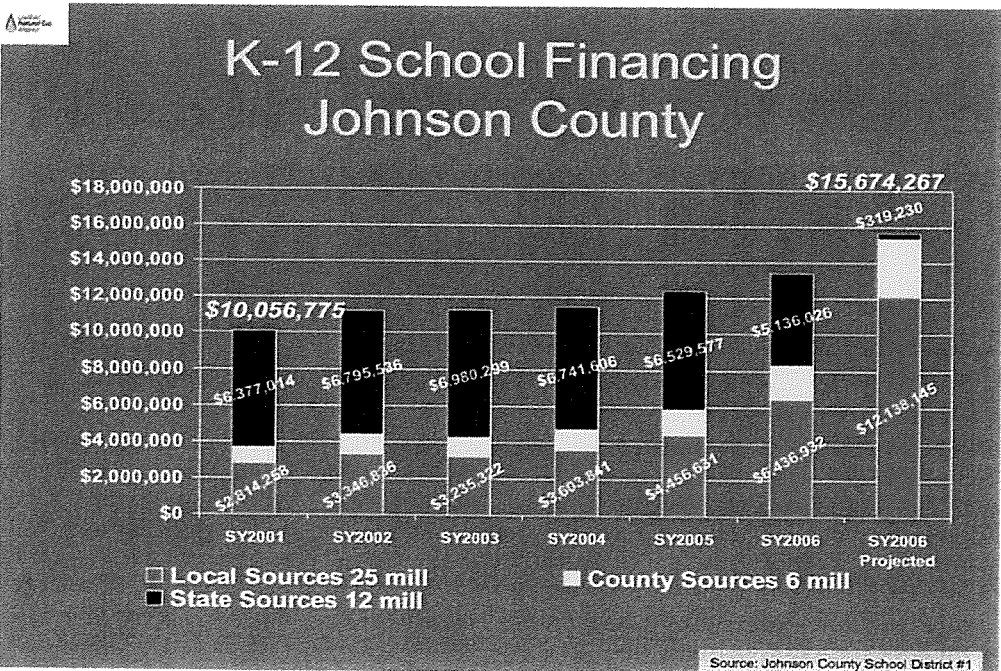
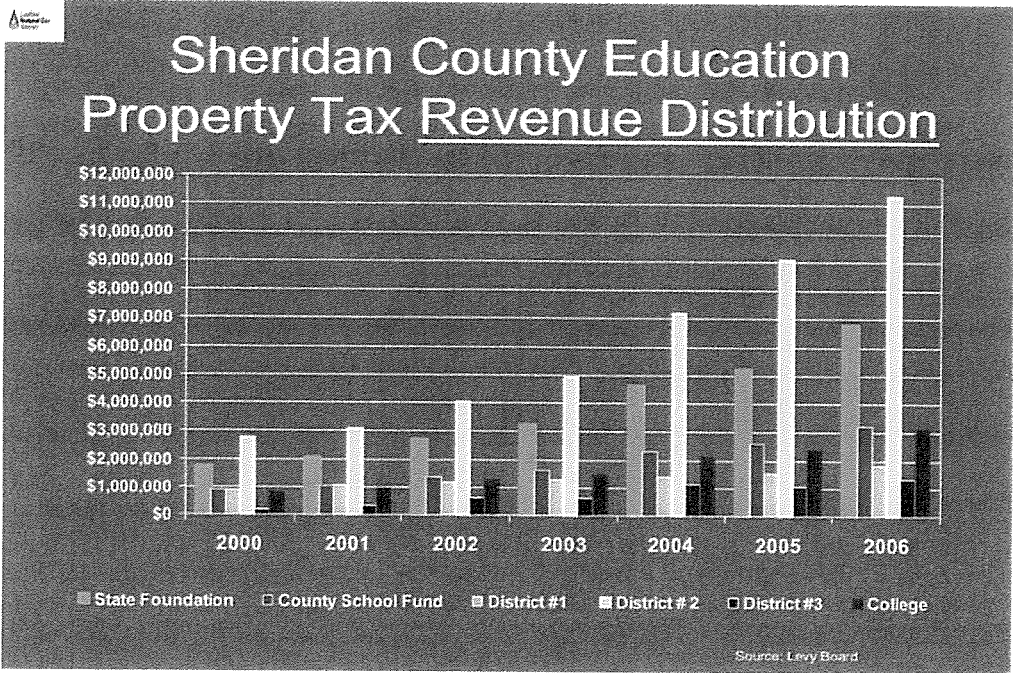


CHART 10



As I conclude this section on education, I would be amiss if I did not bring attention to the fact that, Johnson and Sheridan County, have experienced nearly \$70,000,000 worth of new school construction, of which only \$8.2 million coming from local sources in Johnson County. In the term of debt retirement the local general obligation bonds in Johnson County, over 60% will be retired by the local coal bed natural gas production through mine product taxes. Without the vibrant mineral industry in Wyoming, of which the coal bed industry is a part, the burden of school construction, so ordered by the Wyoming Supreme Court would have fallen on the residential, agriculture and commercial property owners.

In my conclusion, It should be pointed out that strong CBNG revenue increases in **Sheridan** and **Johnson County** are correlated with local production. We must also keep in mind global natural gas prices, prices that have faltered during the past twelve months, having a major impact on the viability of the industry and the property tax stream to local governments associated with the value of natural gas.

Again, I thank you for allowing me this time to enter into your record my testimony. Respectfully submitted,


Ken Kerns. Consultant

The Double Rafter

January 17, 2007



HOT SPRINGS COUNTY COMMISSIONERS

415 ARAPAHOE
THERMOPOLIS, WYOMING 82443
307/864-3515

FAX: 307/864-3333 EMAIL: hsc@state.wy.us

RECEIVED FEB 16 2007

Date: February 16, 2006

To: Mark Gordon, Chairman
Environmental Quality Council of Wyoming
Herschler Building, 1 West
122 West 25th Street, Room 1714
Cheyenne, Wyoming 82002

Re: Comments from Hot Springs County Concerning the
PRBRC Petition to Amend Wyoming Water Quality Rule
Chapter 2, Appendix H

Dear Sir:

Hot Springs County desires to submit the following written comments concerning the Petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H.

Summary: Hot Springs County recommends that the petition submitted by the Powder River Basin Resource Council be denied due to an anticipated negative impact on the social/economic structure of Hot Springs County. It is our determination that the petition was narrowly focused upon the CBM industry in the Powder River Basin, and did not address the impacts of the petitioned changes on other industries, Counties and the State of Wyoming.

Hot Springs County asserts that various County, State and Federal regulations all require the utilization of social/economic impact studies when evaluating proposed State and/or Federal actions; and that, the PRBRC's petition was materially deficient by not including such social/economic impact studies.

Discussion:

- 1.) Hot Springs County, and at least three other "have not" Counties (such as Niobrara, Big Horn and Washakie) have not shared in the current "boom" in Wyoming and have extremely fragile economies. Hot Springs County actually lost population (-5.8% or 284 people) during the period 2000-2004 (see attachment A), has the oldest mean average age of any County in Wyoming and has a non-diverse economy based on several critical industries. Approximately 70% of the County's tax revenue is generated by the oil/gas industry which has been in decline for several decades (see attachment B).

- 2.) The economy of Hot Springs County is precariously dependent upon the agriculture, tourism, health care and oil/gas industries. None of the County's base industries is strong enough to endure further regulations, restrictions, loss of population, droughts, economic disruption, and other various influences which may negatively impact the industries.

- 3.) Hot Springs County, in order to legally adopt policies and goals addressing natural resources on State and Federal lands, passed the Hot Springs County Natural Resources Plan for State and Federal Lands after lengthy public hearings. The plan contains certain specific policies and goals that relate to natural resource issues and the impact of management policies and regulations on the social/economic structure of the County (see attachment D).

- 4.) Hot Springs County asserts that enabling legislation (Wyoming Statute 35-11-302) for the Water Quality Division of the Department of Environmental Quality (see attachment E), requires:

“(vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board shall consider all the facts and circumstances bearing upon the reasonableness of the pollution involved including:

 - (A) The character and degree.....
 - (B) The social and economic value of the source of pollution;”

- 5.) Hot Springs County asserts that Federal NEPA regulations require a detailed analysis of the social/economic impact of any Federal action, including any Federal action “connected” to a State's actions. (see attachment C).

- 6.) As stated in (3), (4) and (5) above, County, State and Federal regulations all require an analysis of the effect of a State/Federal action upon the social-economic structure of the local population.

- 7.) Hot Springs County asserts that the PRBRC's petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H is narrowly focused and does not contain a social-economic analysis of the effect of the proposed amendment to the State in general and to the various Counties, including the small “have not” Counties such as Hot Springs County. It is the contention of Hot Springs County, that the petition is materially deficient by not including a social-economic analysis.

- 8.) Hot Springs County recommends that an independent, third party social economic study be commissioned for purposes of defining the social-economic impact of the proposed action on the Counties and the

various industries within the Counties. The Hot Springs County Land Use Plan for State and Federal Lands, does in-fact require such a study(ies) :

“2. As required by Federal statute, Hot Springs County shall require that both State and Federal agencies assess the effect of their actions on the economy, custom and culture of Hot Springs County by utilization of economic studies such as cost/benefit analysis, economic impact analysis, lowest cost alternatives, most economic benefit analysis and analysis of the economy of the County in order to protect its general economic health. Hot Springs County at its discretion, may be involved in this process.”

- 9.) Hot Springs County asserts that it is a legally established division of the State of Wyoming; and as such, The Hot Springs County Land Use Plan for State and Federal Lands is authorized by legislative action and has significant legal standings and must be considered by the Environmental Quality Council as it considers the petition. Hot Springs County Commissioners approved the plan on April 4, 2005 by Resolution 2005-03 (see attachment F).
- 10.) Hot Springs County is aware that other Counties in Wyoming have adopted similar plans (including Washakie and Fremont) and suggests that those legally adopted plans need to be considered also.
- 11.) Hot Springs County highly recommends the social/economic studies prepared by the University of Wyoming Department of Agriculture and Applied Economics. An example of an suitable economic analysis entitled Economic Impacts of Reductions in Federal Grazing in Fremont County, Wyoming , by David “Tex” Taylor, Tom Foulke, Jim Thompson, and Roger Coupal of the University of Wyoming is attached (see attachment G).
- 12.) Hot Springs County asserts that the USFS sufficiently considered the social/economic affect of their proposed action entitled Forest Plan Amendments for Grizzly Bear Conservation for the Greater Yellowstone Area National Forests: Draft Environmental Impact Statement , July 2004; and that, the University of Wyoming, Department of Agriculture and Applied Economics contracted for and prepared much of the data. Hot Springs County supports and recommends the utilization of best available science which the report represents.
- 13.) Hot Springs County and its residents participated in previous reviews of the discharge water issue in 1988. At that time a letter from the Thomas E. Enright, Area Manger, Cody Resource Area, Bureau of Land Management to John Wagner, Water Quality Division, Wyoming

Department of Environmental Quality, dated November 03, 1988 (see attachment H) stated:

“Our interest in water quality, from point source discharges, is primarily related to the surface discharge of water produced in conjunction with oil and gas production and the various beneficial uses to which this water is presently applied. In the Cody Resource Area, produced water is providing benefits to riparian vegetation, waterfowl and shorebird habitat, and drinking water sources for livestock and terrestrial wildlife. We view this produced water as an important benefit to our management of the public land.”

- 14.) Hot Springs County participates in the Big Horn Basin Sage Grouse Working Group which has identified water improvements and usage of discharge water as being of paramount importance in sustaining sage grouse populations. A Hot Springs County water improvement project was awarded a \$15,000 grant (from a legislatively authorized \$500,000 appropriation for sage grouse projects) for spring improvements designed to improve wildlife watering resources. The County asserts that more restrictive water discharge standards would negatively affect the County's wildlife populations.
- 15.) Hot Springs County asserts that natural discharge water from the Big Springs at Hot Springs State Park and numerous smaller springs, is co-mingled with Class I water from the Big Horn River after it exits the Wind River Canyon; and that, the naturally occurring species in the Big Horn River from the point of co-mingling to the Montana Sate line, have adapted to highly mineralized water and therefore, are tolerant of discharge waters high in total dissolved solids and sulfates.
- 16.) Hot Springs County asserts that it is west of the 98th Parallel, is situated in a zone of semi-arid rainfall, and that highly mineralized water is commonly encountered both naturally and through man-made sources, and that discharge water high in total dissolved solids (tds) and sulfates is not uncommon or negatively perceived.
- 17.) Hot Springs County asserts that it has endured 4-5 years of continuous drought and that the County's agricultural operations are financially distressed by the enduring drought. The County also asserts that many of its agricultural operators are dependent upon surface discharge waters for livestock watering and irrigation.
- 18.) Hot Springs County asserts that most of the County's oil fields are old, aged oil fields commonly on secondary and/or tertiary recovery; and that, the County's oil production has experienced steady decline. The County also asserts that County government is financially dependent

upon the aged oil fields for greater than 70% of the County's assessed evaluation.

- 19.) Hot Springs County asserts that it is actively involved in monitoring and mitigating water quality problems in the County – primarily through the activities of the Hot Springs Conservation District. The Hot Springs County Land Use Plan for State and Federal Lands recognized three pertinent water quality studies commissioned by the Hot Springs Conservation District during the period 1999-2005 (see attachment J). Several of the studies and reports were funded or partially funded with grant money from the Wyoming Department of Environmental Quality.
- 20.) Hot Springs County asserts that the surface water discharge problems in the Powder River Basin are a “localized” problem; and that, the petition presented by the PRBRC failed to recommend “localized” solution(s) such as water quality standards specific to the CBM industry. It is the recommendation of Hot Springs County, that CBM surface water discharge standards be adopted specifically for the CBM industry which DO NOT impact the other industries and Counties in Wyoming.
- 21.) Hot Springs County asserts that it is the responsibility of the petitioning party, the PRBRC in this case, to pay for the required social/economic impact studies associated with its petition. The burden of producing the social/economic impact studies should not be borne by the Environmental Quality Council, the Department of Environmental Quality, affected industries, affected Counties and/or affected individuals.
- 22.) Hot Springs County asserts that The Hot Springs County Land Use Plan for State and Federal Lands contains a provision allowing for conductance of public hearings by the Board of County Commissioners in order to establish Findings of Facts and Conclusions of Law; and that, County input concerning the social/economic impact of surface water discharge on the County's general welfare can be further determined by such hearing(s); and that, the Environmental Quality Council also has the capability of conducting public hearings in the affected Counties; and that, joint hearings conducted by individual Counties and the EQC may be appropriate.
- 23.) With respect to the PETITION TO AMEND WYOMING WATER QUALITY RULE, CHAPTER 2, APPENDIX H, Hot Springs County is specifically opposed to ALL of the proposed changes indicated in Exhibit 1 to the petition and recommends against lowering of the water quality standards for:

Sulfates: currently 3000 mg/l and no change recommended
Total dissolved solids: currently 5000 mg/l and no change recommended
Barium: currently 1.0 mg/l and no change recommended

Hot Springs County also asserts that the actual, historic beneficial use of surface discharge water has been and should remain as year around discharge in order to meet the needs of the livestock industry, the needs of wildlife and the discharge needs of the oil/gas industry.

- 24.) Hot Springs County further asserts that Federal public land management regulations require the various public lands in Hot Springs County to be managed for multiple use, sustainable yield and increased productivity. Hot Springs County has adopted a "threshold" for the sustainable yield criteria in the Hot Springs County Land Use Plan for State and Federal Lands which states:

" Public lands are to be managed for sustainability and/or increase in all of the resources to include the social/economic affect on the County and its residents. To that end, no net loss in total economic activity, adjusted for inflation, shall be acceptable: and in order to meet this goal, mitigation measures are to be employed by State and Federal land managers."

Hot Springs County asserts it HAS NOT been able to achieve sustainability of its economic activity, especially the oil/gas industry; and that, no further net loss in economic activity is tolerable; and further, the County desires to restore economic activity to historic levels.

- 25.) The Hot Springs County Land Use Plan for State and Federal Lands, has a provision in the Incremental Bureaucratic Regulations section on page 73, which requires:

" 4.) As required by the Administrative Procedures Act, Hot Springs County shall require the various agencies to document that their decisions adequately took into account the health, safety, custom, culture and general welfare (including the economic impact) of their actions on the County."

- 26.) The Hot Springs County Land Use Plan for State and Federal Lands states:

"Hot Springs County asserts that the County, at its discretion, has the right to be involved in all decision making and regulatory functions which have

an effect on the county's economic stability, custom, culture and the well being of its citizens."

The Hot Springs County Commissioners, at their regularly scheduled Board of County Commissioners on February 7, 2006, elected to formally participate in the decision making process relating to the petition to amend the surface water discharge standards, and requests full notification and involvement in the decision making process as a division of State government.

We request that these comments be entered into the public record concerning the PETITION TO AMEND WYOMING WATER QUALITY RULE, CHAPTER 2, APPENDIX H. In addition, we request that the entire Hot Springs County Land Use Plan for State and Federal Lands be recognized as extant and amended to the public records in its entirety as it relates to the PRBRC petition.

Thank you very much for the opportunity to publicly comment and submit written testimony concerning the petition to amend.

Brad W. Basse, Chairman of the Hot Springs County Commissioners



HOT SPRINGS COUNTY COMMISSIONERS

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FILED

MAR 23 2007

Terri A. Lorenzon, Director
Environmental Quality Council

Date: March 20, 2007

To: Richard C. Moore, Chairman
Environmental Quality Council of Wyoming
Herschler Building, 1 West
122 West 25th Street, Room 1714
Cheyenne, Wyoming 82002

Kip Crofts, Counsel to the Governor
Office of the Governor
State Capital, 200 West 24th Street
Cheyenne, Wyoming 82002

Re: Comments from Hot Springs County Concerning the
PRBRC Petition to Amend Wyoming Water Quality Rule
Chapter 2, Appendix H and Appendix I
"STATEMENT OF PRINCIPAL REASONS"

Dear Sir:

Hot Springs County desires to submit the following written comments concerning the "STATEMENT OF PRINCIPAL REASONS" concerning the Petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H and Appendix I, Docket No. 05-3102:

Summary:

Hot Springs County asserts that the administrative record for the petition to amend the State's water quality standards does not document consideration of the effect of the proposed water quality amendments upon the social/economic structure of the County; and therefore, the Environmental Quality Council's ruling was arbitrary and capricious.

In his December 6, 2006 letter to Kip Crofts, Counsel to the Governor, Attorney General Pat Crank quoted Wyoming Statute as:

" Rules adopted by an agency must be supported by relevant information in the record, or they will be struck down as arbitrary and capricious." (see Attachment A).

Hot Springs County asserts that various County, State and Federal regulations all require the utilization of social/economic impact studies when evaluating proposed State and/or Federal actions; and that, the PRBRC's petition, the EQC proceedings and administrative record, and the "STATEMENT OF PRINCIPAL REASONS" were materially deficient by not including such social/economic impact studies.

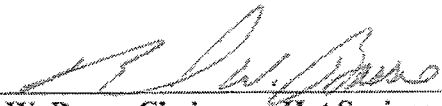
Discussion:

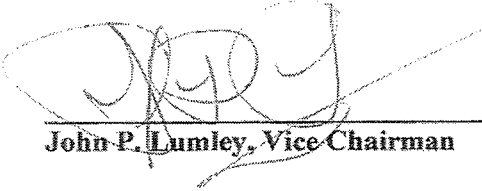
Hot Springs County submitted substantial documentation asserting that the Environmental Quality Council was required to consider the social/economic effect of the proposed regulations. The County contends that the "STATEMENT OF PRINCIPAL REASONS" did not cite social/economic impacts nor has the public record adequately documented consideration of social/economic effects.

Legal considerations which were aired during the proceedings included whether or not the Environmental Quality Council had authority to regulate quantity of discharge waters and whether or not coal bed methane could be treated separately from conventional oil and gas operations. The County contends that it is an oversight to not consider the social/economic impact of the proposed regulations; and that, the proposed action is legally very weak by failing to incorporate social/economic considerations in the deliberations and the decision record.

The Environmental Quality Council has gone in search of additional and more definitive information concerning water quality standards (numeric standards) and has commissioned a separate report by the University of Wyoming (Dr. Raisbeck). Dr. Raisbeck's study is entitled "Critical Review of the Scientific Literature Relating to Water Quality for Wyoming Livestock and Wildlife" which indicates that social/economic impacts are not part of the study. The County is concerned that submittal of Dr. Raisbeck's report will be without analysis of the social/economic effect of the numeric standards on the County's economy. We respectfully request that a similar study be commissioned which analyzes at least three (3) options for the social/economic impacts of the proposed amendments to the State's water quality standards.

The County asserts that the Environmental Quality Council would be remiss by utilizing Dr. Raisbeck's literature search as a decision making tool without accompanying economic impact studies. Our reasons for adamantly requiring the analysis of the economic impact the actions would have on the County's economy were laid out in our February 16, 2006 letter the content of which is attached (Attachment B).


Brad W. Basse, Chairman, Hot Springs County Commissioners


John P. Lumley, Vice Chairman


Frank T. Manning, Commissioner

Cc Pat Crank, Attorney General
Ryan Lance, Deputy Chief of Staff
Mary Flanderka, Governor's Planning Office
Terri Lorenzen, Director/Attorney for the Environmental Quality Council
Jerry Williams, County Attorney
Hans Odde, County Clerk

Attachments:

- A. December 6, 2006 letter from Attorney General Pat Crank to Kip Crofts, Counsel to the Governor. Re: Environmental Quality Council – Citizen Petition, Appendix I, regarding additional requirements applicable to produced water discharges from coal bed natural gas (coalbed methane “CBM”) facilities.
- B. February 16, 2006 letter from Brad W. Basse, Chairman of the Hot Springs County Commissioners to Mark Gordon, Chairman of the Environmental Quality Council. Re: Comments from Hot Springs County Concerning the PRBRC Petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H.



FILED

DEC 12 2006

Terri A. Lorenzon, Director
Environmental Quality Council

Office of the Attorney General

Governor
Dave Freudenthal

Civil Division
123 Capitol Building
Cheyenne, Wyoming 82002
307-777-7876/777-7886 Telephone
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Chief Deputy Attorney General
Elizabeth C. Gagen

Attorney General
Patrick J. Crank

December 6, 2006

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL ATTORNEY/CLIENT COMMUNICATION

To: Kip Crofts, Governor's Office, Counsel to the Governor

From: Pat Crank, Attorney General *PJC*

Re: Environmental Quality Council – Citizen petition, Appendix I, regarding additional requirements applicable to produced water discharges from coal bed natural gas (coalbed methane “CBM”) facilities.

I have reviewed the above referenced proposed rule. The proposed rule largely parrots the existing standards for produced water discharges found in Water Quality Rules Ch. 2, Appendix H and existing statutes. The major changes found in the proposed rules are the reduction in the effluent limits for sulfates and total dissolved solids and the addition of an effluent limit for barium. *Proposed Water Quality Rules* Ch. 2, Appendix I (b)(vii)(B), (C), and (E). At this point, the Environmental Quality Council (EQC) has provided no information to show that the proposed limits are based on scientific data or other relevant information.

Rules adopted by an agency must be supported by relevant information in the record, or they will be struck down as arbitrary and capricious. Specifically, WYO. STAT. ANN. § 16-3-114(c) provides, in relevant part, that a reviewing court shall:

(ii) Hold unlawful and set aside agency action, findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law[.]

The Wyoming Supreme Court has stated, “[w]e have often said administrative officers and boards will not be permitted to act in an arbitrary, capricious or fraudulent manner, and courts will restrain such administrative agencies from becoming despotic.” *Board of Trustees of School Dist. No. 3, Natrona County v. District Boundary Bd. of Natrona County*, 489 P.2d 413, 417 (Wyo. 1971). Therefore, no administrative agency has the authority to act arbitrarily. “The term ‘arbitrary’ has been generally defined as willful and unreasoning action, without consideration and regard for the facts and circumstances presented, and without adequate determining principle.” *Tri-State Generation and Transmission Ass’n, Inc. v. Environmental Quality Council*, 590 P.2d 1324, 1330 (Wyo. 1979). “An agency action is arbitrary or capricious if it is not based on a consideration of the relevant factors.” *Id.* at 1330-1331. In this instance, the proposed rules significantly reduce the effluent limits found in the existing DEQ standards, which have been through the rulemaking process and have been utilized by DEQ for a number of years. Such a change requires some explanation or scientific data supporting the change.

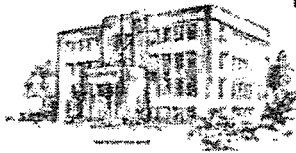
In addition, the Environmental Quality Act (EQA) evidences an intent that rules and regulations promulgated pursuant to the act be subject to thorough examination and review and based on the consideration of relevant factors. Specifically, the EQA sets out a process whereby the administrators of the divisions are to consult with the appropriate advisory board before recommending rules to the director. WYO. STAT. ANN. § 35-11-110. After consultation, these advisory boards are to recommend, through the administrators and the director, rules and regulations to implement and carry out the provisions and purposes of the EQA. WYO. STAT. ANN. § 35-11-114. The director then recommends rules to the EQC. The EQA thus provided several layers of review and examination. WYO. STAT. ANN. § 35-11-112. In addition, the statutes individually set out different detailed regulations for the various department divisions. The statutes related to those individual divisions generally provide factors that the administrators are to consider when promulgating regulations. See WYO. STAT. ANN. §§ 35-11-202; 35-11-302; 35-11-401. The Wyoming Supreme Court has indicated that the EQC may find it advantageous to refer to the factors listed in the statute and that those factors may be of assistance to courts when determining whether the EQC has considered the relevant information when reaching a decision on a particular pollution standard. *Tri-State Generation and Transmission*, 590 P.2d at 1332.

The other change evidenced by the rules is the policy decision to treat water produced from conventional oil and gas drilling operations differently than the water

Kip Crofts
December 6, 2006
Page 3 of 3

produced by CBM development. I believe that such a policy shift should also be justified by some scientific data or other relevant information or the rules could be challenged as being arbitrary and capricious. I am unaware whether such information exists and would ask the EQC for the basis supporting this policy change.

The statutory scheme indicates that the legislature intended the rules and regulations adopted pursuant to the EQA to be the result of measured consideration and thorough consultation. As such, I would advise that you ask the EQC to provide any and all documentation to support the limits included within proposed Appendix I and documents justifying treatment of CBM discharges differently than discharges associated with conventional oil and gas operations. The rules cannot proceed until we are sure that the rules will not be struck down as arbitrary and capricious.



HOT SPRINGS COUNTY COMMISSIONERS

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RECEIVED FEB 16 2007

Date: February 16, 2006

To: Mark Gordon, Chairman
Environmental Quality Council of Wyoming
Herschler Building, 1 West
122 West 25th Street, Room 1714
Cheyenne, Wyoming 82002

Re: Comments from Hot Springs County Concerning the
PRBRC Petition to Amend Wyoming Water Quality Rule
Chapter 2, Appendix H

Dear Sir:

Hot Springs County desires to submit the following written comments concerning the Petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H.

Summary: Hot Springs County recommends that the petition submitted by the Powder River Basin Resource Council be denied due to an anticipated negative impact on the social/economic structure of Hot Springs County. It is our determination that the petition was narrowly focused upon the CBM industry in the Powder River Basin, and did not address the impacts of the petitioned changes on other industries, Counties and the State of Wyoming.

Hot Springs County asserts that various County, State and Federal regulations all require the utilization of social/economic impact studies when evaluating proposed State and/or Federal actions; and that, the PRBRC's petition was materially deficient by not including such social/economic impact studies.

Discussion:

- 1.) Hot Springs County, and at least three other "have not" Counties (such as Niobrara, Big Horn and Washakie) have not shared in the current "boom" in Wyoming and have extremely fragile economies. Hot Springs County actually lost population (-5.8% or 284 people) during the period 2000-2004 (see attachment A), has the oldest mean average age of any County in Wyoming and has a non-diverse economy based on several critical industries. Approximately 70% of the County's tax revenue is generated by the oil/gas industry which has been in decline for several decades (see attachment B).

- 2.) The economy of Hot Springs County is precariously dependent upon the agriculture, tourism, health care and oil/gas industries. None of the County's base industries is strong enough to endure further regulations, restrictions, loss of population, droughts, economic disruption, and other various influences which may negatively impact the industries.
- 3.) Hot Springs County, in order to legally adopt policies and goals addressing natural resources on State and Federal lands, passed the Hot Springs County Natural Resources Plan for State and Federal Lands after lengthy public hearings. The plan contains certain specific policies and goals that relate to natural resource issues and the impact of management policies and regulations on the social/economic structure of the County (see attachment D).
- 4.) Hot Springs County asserts that enabling legislation (Wyoming Statute 35-11-302) for the Water Quality Division of the Department of Environmental Quality (see attachment E), requires:

“(vi) In recommending any standards, rules, regulations, or permits, the administrator and advisory board shall consider all the facts and circumstances bearing upon the reasonableness of the pollution involved including:

- (A) The character and degree.....
- (B) The social and economic value of the source of pollution;”

- 5.) Hot Springs County asserts that Federal NEPA regulations require a detailed analysis of the social/economic impact of any Federal action, including any Federal action “connected” to a State's actions. (see attachment C).
- 6.) As stated in (3), (4) and (5) above, County, State and Federal regulations all require an analysis of the effect of a State/Federal action upon the social-economic structure of the local population.
- 7.) Hot Springs County asserts that the PRBRC's petition to Amend Wyoming Water Quality Rule, Chapter 2, Appendix H is narrowly focused and does not contain a social-economic analysis of the effect of the proposed amendment to the State in general and to the various Counties, including the small “have not” Counties such as Hot Springs County. It is the contention of Hot Springs County, that the petition is materially deficient by not including a social-economic analysis.
- 8.) Hot Springs County recommends that an independent, third party social economic study be commissioned for purposes of defining the social-economic impact of the proposed action on the Counties and the

various industries within the Counties. The Hot Springs County Land Use Plan for State and Federal Lands, does in-fact require such a study(ies) :

“2. As required by Federal statute, Hot Springs County shall require that both State and Federal agencies assess the effect of their actions on the economy, custom and culture of Hot Springs County by utilization of economic studies such as cost/benefit analysis, economic impact analysis, lowest cost alternatives, most economic benefit analysis and analysis of the economy of the County in order to protect its general economic health. Hot Springs County at its discretion, may be involved in this process.”

- 9.) Hot Springs County asserts that it is a legally established division of the State of Wyoming; and as such, The Hot Springs County Land Use Plan for State and Federal Lands is authorized by legislative action and has significant legal standings and must be considered by the Environmental Quality Council as it considers the petition. Hot Springs County Commissioners approved the plan on April 4, 2005 by Resolution 2005-03 (see attachment F).
- 10.) Hot Springs County is aware that other Counties in Wyoming have adopted similar plans (including Washakie and Fremont) and suggests that those legally adopted plans need to be considered also.
- 11.) Hot Springs County highly recommends the social/economic studies prepared by the University of Wyoming Department of Agriculture and Applied Economics. An example of an suitable economic analysis entitled Economic Impacts of Reductions in Federal Grazing in Fremont County, Wyoming , by David “Tex” Taylor, Tom Foulke, Jim Thompson, and Roger Coupal of the University of Wyoming is attached (see attachment G).
- 12.) Hot Springs County asserts that the USFS sufficiently considered the social/economic affect of their proposed action entitled Forest Plan Amendments for Grizzly Bear Conservation for the Greater Yellowstone Area National Forests: Draft Environmental Impact Statement , July 2004; and that, the University of Wyoming, Department of Agriculture and Applied Economics contracted for and prepared much of the data. Hot Springs County supports and recommends the utilization of best available science which the report represents.
- 13.) Hot Springs County and its residents participated in previous reviews of the discharge water issue in 1988. At that time a letter from the Thomas E. Enright, Area Manger, Cody Resource Area, Bureau of Land Management to John Wagner, Water Quality Division, Wyoming

Department of Environmental Quality, dated November 03, 1988 (see attachment H) stated:

“Our interest in water quality, from point source discharges, is primarily related to the surface discharge of water produced in conjunction with oil and gas production and the various beneficial uses to which this water is presently applied. In the Cody Resource Area, produced water is providing benefits to riparian vegetation, waterfowl and shorebird habitat, and drinking water sources for livestock and terrestrial wildlife. We view this produced water as an important benefit to our management of the public land.”

- 14.) **Hot Springs County participates in the Big Horn Basin Sage Grouse Working Group which has identified water improvements and usage of discharge water as being of paramount importance in sustaining sage grouse populations. A Hot Springs County water improvement project was awarded a \$15,000 grant (from a legislatively authorized \$500,000 appropriation for sage grouse projects) for spring improvements designed to improve wildlife watering resources. The County asserts that more restrictive water discharge standards would negatively affect the County’s wildlife populations.**
- 15.) **Hot Springs County asserts that natural discharge water from the Big Springs at Hot Springs State Park and numerous smaller springs, is co-mingled with Class I water from the Big Horn River after it exits the Wind River Canyon; and that, the naturally occurring species in the Big Horn River from the point of co-mingling to the Montana Sate line, have adapted to highly mineralized water and therefore, are tolerant of discharge waters high in total dissolved solids and sulfates.**
- 16.) **Hot Springs County asserts that it is west of the 98th Parallel, is situated in a zone of semi-arid rainfall, and that highly mineralized water is commonly encountered both naturally and through man-made sources, and that discharge water high in total dissolved solids (tds) and sulfates is not uncommon or negatively perceived.**
- 17.) **Hot Springs County asserts that it has endured 4-5 years of continuous drought and that the County’s agricultural operations are financially distressed by the enduring drought. The County also asserts that many of its agricultural operators are dependent upon surface discharge waters for livestock watering and irrigation.**
- 18.) **Hot Springs County asserts that most of the County’s oil fields are old, aged oil fields commonly on secondary and/or tertiary recovery; and that, the County’s oil production has experienced steady decline. The County also asserts that County government is financially dependent**

upon the aged oil fields for greater than 70% of the County's assessed evaluation.

- 19.) Hot Springs County asserts that it is actively involved in monitoring and mitigating water quality problems in the County – primarily through the activities of the Hot Springs Conservation District. The Hot Springs County Land Use Plan for State and Federal Lands recognized three pertinent water quality studies commissioned by the Hot Springs Conservation District during the period 1999-2005 (see attachment J). Several of the studies and reports were funded or partially funded with grant money from the Wyoming Department of Environmental Quality.
- 20.) Hot Springs County asserts that the surface water discharge problems in the Powder River Basin are a “localized” problem; and that, the petition presented by the PRBRC failed to recommend “localized” solution(s) such as water quality standards specific to the CBM industry. It is the recommendation of Hot Springs County, that CBM surface water discharge standards be adopted specifically for the CBM industry which DO NOT impact the other industries and Counties in Wyoming.
- 21.) Hot Springs County asserts that it is the responsibility of the petitioning party, the PRBRC in this case, to pay for the required social/economic impact studies associated with its petition. The burden of producing the social/economic impact studies should not be borne by the Environmental Quality Council, the Department of Environmental Quality, affected industries, affected Counties and/or affected individuals.
- 22.) Hot Springs County asserts that The Hot Springs County Land Use Plan for State and Federal Lands contains a provision allowing for conductance of public hearings by the Board of County Commissioners in order to establish Findings of Facts and Conclusions of Law; and that, County input concerning the social/economic impact of surface water discharge on the County's general welfare can be further determined by such hearing(s); and that, the Environmental Quality Council also has the capability of conducting public hearings in the affected Counties; and that, joint hearings conducted by individual Counties and the EQC may be appropriate.
- 23.) With respect to the PETITION TO AMEND WYOMING WATER QUALITY RULE, CHAPTER 2, APPENDIX H, Hot Springs County is specifically opposed to ALL of the proposed changes indicated in Exhibit 1 to the petition and recommends against lowering of the water quality standards for:

Sulfates: currently 3000 mg/l and no change recommended
Total dissolved solids: currently 5000 mg/l and no change recommended
Barium: currently 1.0 mg/l and no change recommended

Hot Springs County also asserts that the actual, historic beneficial use of surface discharge water has been and should remain as year around discharge in order to meet the needs of the livestock industry, the needs of wildlife and the discharge needs of the oil/gas industry.

- 24.) Hot Springs County further asserts that Federal public land management regulations require the various public lands in Hot Springs County to be managed for multiple use, sustainable yield and increased productivity. Hot Springs County has adopted a "threshold" for the sustainable yield criteria in the Hot Springs County Land Use Plan for State and Federal Lands which states:

" Public lands are to be managed for sustainability and/or increase in all of the resources to include the social/economic affect on the County and its residents. To that end, no net loss in total economic activity, adjusted for inflation, shall be acceptable: and in order to meet this goal, mitigation measures are to be employed by State and Federal land managers."

Hot Springs County asserts it HAS NOT been able to achieve sustainability of its economic activity, especially the oil/gas industry; and that, no further net loss in economic activity is tolerable; and further, the County desires to restore economic activity to historic levels.

- 25.) The Hot Springs County Land Use Plan for State and Federal Lands, has a provision in the Incremental Bureaucratic Regulations section on page 73, which requires:

" 4.) As required by the Administrative Procedures Act, Hot Springs County shall require the various agencies to document that their decisions adequately took into account the health, safety, custom, culture and general welfare (including the economic impact) of their actions on the County."

- 26.) The Hot Springs County Land Use Plan for State and Federal Lands states:

"Hot Springs County asserts that the County, at its discretion, has the right to be involved in all decision making and regulatory functions which have

an effect on the county's economic stability, custom, culture and the well being of its citizens."

The Hot Springs County Commissioners, at their regularly scheduled Board of County Commissioners on February 7, 2006, elected to formally participate in the decision making process relating to the petition to amend the surface water discharge standards, and requests full notification and involvement in the decision making process as a division of State government.

We request that these comments be entered into the public record concerning the PETITION TO AMEND WYOMING WATER QUALITY RULE, CHAPTER 2, APPENDIX H. In addition, we request that the entire Hot Springs County Land Use Plan for State and Federal Lands be recognized as extant and amended to the public records in its entirety as it relates to the PRBRC petition.

Thank you very much for the opportunity to publicly comment and submit written testimony concerning the petition to amend.

Brad W. Basse, Chairman of the Hot Springs County Commissioners