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November 9, 2009

Mr. Dennis Boal
Chairman, Environmental Quality Council
122 West 25th Street
Herschler Building, Room 1714
Cheyenne, WY 82002

Re: Docket #08-3101

Dear Chairman Boal,

Thank you for the opportunity to provide additional comments on Docket #08-3101, specifically on Dr. Hendrix and Dr. Buchanan's final report, *Expert Opinion on the Tier II Methodology: Report to the Wyoming Environmental Quality Council* and *Expert Scientific Opinion on the Tier-2 Methodology: Report to the Wyoming Department of Environmental Quality* (Reports). Devon Energy Production Company, L.P. (Devon) has participated in the Sec. 20 rulemaking process and has previously provided comments on the rulemaking package to the Environmental Quality Council (EQC), Wyoming Department of Environmental Quality (WDEQ), and the Waste Water Advisory Board (WWAB).

Devon currently operates 1,680 Coal Bed Methane (CBM) wells in the Powder River Basin (PRB) from our field office in Gillette. Additionally, Devon has oil and gas exploration and production operations throughout Wyoming with field offices in Baggs, Riverton, and Worland. The Reports' conclusion and recommendations on Tier 1 standards and Tier 2 methodology has potential to significantly impact Devon's CBM operations.

Devon does not support the recommendations of the expert reports submitted to the EQC and the WDEQ. The reports fail to identify the success of the existing Agricultural Use Protection Policy (AUPP) throughout the PRB and the State. Further the reports do not provide evidence of a "measurable decrease in crop production" as identified in the rule. The report's recommendations that WDEQ establish a managed irrigation program that incorporates the regulation of water quantity raises issues related to private property rights, administrative authority, economic reasonableness, and the practicality of developing and enforcing such a regulatory management scheme.

Since 2006, Devon has successfully utilized the Tier 1 standards and Tier 2 methodology of the AUPP and is confident that the existing AUPP achieves the goals outlined in the proposed rule. The reports, as well as the administrative record to date, fail to identify specific instances where agricultural production has declined based on the use of CBM produced water for irrigation.

Devon requests that the EQC formally acknowledge the WDEQ's revocation of the proposed rulemaking package and allow the agency and stakeholders to evaluate practical and reasonable management solutions that will adhere to the narrative standard set forth in the rule. Devon is committed to

continued participation in the rulemaking and policy setting process to ensure that agricultural landowners are not subject to a measurable decrease in agricultural production.

Please contact me directly with any questions.

Sincerely,

A handwritten signature in black ink that reads "R. W. Maxey". The signature is written in a cursive style with a large, looped "y" at the end.

Randall W. Maxey
Supervisor - Regulatory Affairs
Western Division