

ENCOURAGING RESPONSIBLE DEVELOPMENT TODAY ~ FOR TOMORROW

934 N. MAIN ST. SHERIDAN, WY 82801 (307) 672-5809 FAX (307) 672-5800
INFO@POWDERRIVERBASIN.ORG WWW.POWDERRIVERBASIN.ORG



FILED
OCT 06 2009
Jim Ruby, Executive Secretary
Environmental Quality Council

October 2, 2009

John Corra, Director
Wyoming Department of Environmental Quality
122 West 25th St.
Herschler Bldg, 4W
Cheyenne, WY 82002

Re: Water Quality Rules and Regulations, Chapter 1, Appendix H

Dear Director Corra:

We would like to commend DEQ for acknowledging that the proposed Chapter I, Appendix H rule must be re-evaluated and seriously revised to ensure appropriate protections for waters and public and private lands in Wyoming. We also appreciate DEQ's initial decision to seek the objective scientific consultants' evaluation, which must have been instrumental in your difficult decision to withdraw the rule from Environmental Quality Council consideration.

We thank you sincerely for inviting your consultants to tour the Powder River Basin to ground-truth their evaluation of the proposed rule and for joining the EPA on their tour of the basin as well.

In light of the two out-of-state expert opinions and the recent guidance of the EPA, we are optimistic that DEQ in the future will be better equipped to establish a workable management and regulatory strategy for CBM produced waters. We anticipate that a strategy can be derived that will fully comply with accepted peer-reviewed science and current state and federal statutes. We expect it will ensure continued beneficial use of produced water for many across the state as well as protection of the agricultural interests of downstream landowners. This presents an excellent opportunity for DEQ to create a workable policy, and we are eager assist you and your staff however we can to help achieve that goal.

At times in the past, our organization's passionate defense of valid science and effective protection of our members' and the public's lands has been characterized as adversarial to the interests of your administration. This has never been the case. It is important for all of us to remember that our differences revolve around legal and scientific issues; they are not intended to become personal nor political.

Please understand that for a decade our members have felt besieged. They have been struggling to save their ranches and agricultural operations from damage and destruction. Many of these are birthrights that have been in their families for 100 years and four or five generations. They have found it necessary to fight the very agencies – agencies of their own state government -- that have been charged with protecting their land and water rights. This makes cooperation and candid communication even more important as we move forward to derive the protective and effective produced water management policy which Wyoming residents deserve.

We are well aware that many are apprehensive of the finalization of this policy. Some landowners are anxious that your decision may limit access and use of higher-quality CBM produced water on their property. Others are fearful that damages they are incurring due to flooding of high level SAR and EC water will continue without relief. Others fear they will experience similar devastation in the future, with no recourse. Importantly, gas producers are concerned that the decision may lead to increases in costs of gas production to a degree that renders their operations economically marginal or uneconomic.

The key fact is, however, that irrespective of these weighty pressures, your job is to ensure that Wyoming policy is based on sound science, not politics, and that it protects the agricultural uses of the land and the valid water rights of Wyoming landowners.

Finally, we want to emphasize that Wyoming is fortunate to have experienced, highly qualified and expert soil and water scientists at the University of Wyoming. DEQ should work closely with these scientists to create the new agricultural protection rule. We respectfully request that credible, credentialed and qualified scientists, agricultural experts and reclamation specialists be invited to cooperate in the "working" group that develops a new rule.

It is a truism that regulatory certainty is in the best interest of everyone involved in the issue of CBM water regulation. All sides believe that new rules must be developed expeditiously. This is truly a unique opportunity for Wyoming to provide strong leadership to create rules of a high caliber which other states can look to emulate.

In conclusion, we once again urge that you refrain from issuing further permits based on the tiered Appendix H methodology. You should be aware that we will continue to vigorously oppose any permits DEQ issues under the *de facto* rule defined in the present "policy." Whether a rule or a policy, overwhelming science has shown this methodology is too flawed to form the basis for valid permit issuance. Additionally, we are concerned about the existing 172 permits DEQ has issued under the flawed Tier 2 policy and we believe they need to be addressed. We look forward to discussing a viable and workable solution with you and your staff.

We would welcome the opportunity to work with your agency in any way we can to help craft a workable and legal rule for CBM WYPDES permitting. We sincerely thank you for your efforts toward that end.

Sincerely,

A handwritten signature in black ink, appearing to read "R. LeResche", followed by a long horizontal line extending to the right.

Robert E. LeResche, Chairman
Powder River Basin Resource Council

cc: Hon. D. Freudenthal, Governor, State of Wyoming
Hon. Carol Rushin, Acting Administrator, EPA Denver
Wyoming Environmental Quality Council
Drs. Munn, Paige, Vance U/W