

MARTIN YATES, III
1912-1985

FRANK W. YATES
1936-1986



105 SOUTH FOURTH STREET
ARTESIA, NEW MEXICO 08210-2118
TELEPHONE (575) 748-1471

S.P. YATES
CHAIRMAN EMERITUS
JOHN A. YATES
CHAIRMAN OF THE BOARD
FRANK YATES, JR.
PRESIDENT
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DIRECTOR
JOHN A. YATES, JR.
DIRECTOR

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Jim Ruby, Executive Secretary
Environmental Quality Council

August 25, 2008

David Waterstreet
Environmental Program Supervisor
DEQ/Water Quality Division
122 West 25th Street
Herschler Building, 4th Floor-West
Cheyenne, WY 82001

Re: Proposed Revision of Chapter 1, Water Quality Rules and Regulations

Dear Mr. Waterstreet:

Yates strongly supports the recommendations of the Water and Waste Advisory Board (WWAB) (March 28, 2008) related to the proposed revision of the Chapter 1 rules and the Agricultural Use Protection Policy. Yates believes the current livestock watering standards provide adequate protection of livestock production, and we support the WWAB's recommendation that only the current livestock watering standards (5,000 mg/L TDS, 3,000 mg/L Sulfate, and 2000 mg/L Chloride) be included in the Chapter 1, Appendix H (b) rule. There is no evidence of harm to livestock or wildlife resulting from the current livestock watering standards, and public comment overwhelmingly supports making no changes to the current standards. Therefore, we oppose any new livestock watering standards or effluent limits, whether by rule or policy, including a new effluent limit on sodium. Also, we request that Chapter 1, Appendix II(b) be amended to clarify that no additional effluent limits will be incorporated into WYPDES permits under the Agricultural Use Protection Policy ("Ag Use Policy") unless it has been demonstrated that a discharge has or will cause a measurable decrease in livestock production and no livestock watering waiver has been submitted. Finally, Yates supports the WWAB's decision to include the size requirements set forth in the current draft's definition of "naturally irrigated lands" in Appendix H (c)(iii).

The exceptions to the livestock watering standards (background water quality and landowner waiver) are extremely important and should be incorporated into the Chapter 1, Appendix H rule, as recommended by the WWAB. Yates opposes the Department's proposal to move these provisions to the Ag Use Policy. These provisions allow livestock producers the flexibility to make sound management decisions. We believe only the metals portion of the prior draft of Appendix H should be moved to the Ag Use Policy.

RANDY G. PATTERSON
SECRETARY

DAVID LANNING
CHIEF OPERATING OFFICER

DENNIS G. KINSEY
TREASURER

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Yates supports the WWAB's recommendation that effluent limits on discharges that began prior to January 1, 1998 not be affected by Chapter 1, Appendix H. There is ample evidence to support the assumption that discharges that occurred prior to January 1, 1998 have had no adverse effect on agricultural production or wildlife. Therefore, Yates requests that Chapter 1, Appendix H(b) be amended to clarify that, in drainages where there were pre-1998 discharges, background be considered to be the pre-1998 effluent limits or background water quality, whichever is poorer.

Yates believes that, if a landowner or livestock producer requests a waiver of the livestock watering effluent limits, the Department should be required to grant the waiver unless other landowners or livestock producers through whose lands the discharge is reasonably expected to flow (when not mixed with runoff) submit written objections providing evidence demonstrating that the discharge will cause harm to their livestock. This would prevent frivolous objections from blocking the discharge of water that a landowner wants to put to beneficial use. We request that this change be made in Chapter 1, Appendix H(b).

Yates opposes any provision in Appendix H that allows a landowner to block the flow of produced water that meets livestock watering standards down the state's watercourse easement. Produced water supplements the surface water supply, making good water available to livestock and wildlife in drainages that seldom have flow. The flow of produced water allows livestock and wildlife to disperse across the range, decreases overgrazing, improves the condition of riparian areas, and increases wildlife populations. The benefit of having a water supply available for livestock and wildlife far outweighs any potential harm to vegetation in or near the stream channel.

If a landowner tells the Department he does *not* have naturally irrigated lands, the Department should accept the landowner's statement as conclusive proof of that fact. Also, if a landowner wishes to waive the irrigation effluent limits for EC and SAR, then the Department should be required to grant the waiver. Therefore, Yates requests that the irrigation waiver provision in Chapter 1, Appendix H(c) be amended to say that a waiver *shall* be granted when the affected landowner requests use of the water.

Yates supports the current draft's requirement that the effluent limits for the protection of "naturally irrigated lands" be limited in their applicability to areas "greater than 20 acres in size or multiple parcels in near proximity that total more than 20 acres." Appendix H also allows for the exclusion of areas which "lack... a persistent active channel and unconsolidated floodplain deposits which are generally less than 50 feet in width." While some have taken the position that a recent decision in a permit appeal requires the elimination of this size requirement, the precedential effect of that decision is limited. The Findings of Fact set forth in the final order from that case stated only that "the size (area) of naturally irrigated bottomlands *protected by effluent limits under the Pumpkin Creek and Willow Creek General Permits* will vary by size." Moreover, the EQC's decision in that appeal was based on questionable testimony that such lands existed in some reaches of the drainages but there was little or no testimony regarding the actual size of such lands. In addition, the proposed Appendix H already has in place a

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DEQ/Water Quality Division

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mechanism for determining whether "naturally irrigated lands" are present. (Appendix H requires the DEQ to evaluate whether such lands are present by review of landowner testimony, infra-red aerial imagery, surface geologic maps and site-specific assessment, among other things.) Also, the definition of "naturally irrigated lands" requires that the lands be used for "agricultural purposes." It is hard to believe that insignificant areas (i.e., those smaller than the threshold already set forth in Appendix H) would be considered as having agricultural value. Finally, the position would require protection wherever an insignificant area of vegetation is present, at the expense of other benefits. For example, a natural extension of this line of thinking would be that an area of ten square feet of alfalfa must be protected at the expense of all other uses of the water. This hardly seems reasonable.

The production of ground water in association with oil and gas operations is not a waste of water. Produced water is put to a wide variety of beneficial uses, including stock watering, irrigation, dust mitigation, wildlife watering, and the creation and maintenance of wildlife habitats. Wildlife populations that thrive on produced water and the habitat it creates include sage grouse, deer, antelope, elk, raccoon, muskrat, pheasant, goose, duck, sage grouse, chukar, partridge, turkey, heron, eagle, hawk, falcon, vulture and owl among others. Produced water allows agricultural producers to be even better stewards of private and public lands, and makes all the difference to the viability of their operations—especially in periods of drought.

Finally, Yates requests that a "non-severability" clause be included in the final rule when the Chapter 1 rules are submitted to the U.S. Environmental Protection Agency (EPA) for final approval. This will ensure that all rule and policy portions of the documents remain intact.

Thank you for the opportunity to comment.

Sincerely,



Lisa Norton
Environmental Division Director
Yates Petroleum Corporation

cc: Governor Dave Freudenthal
Environmental Quality Council