

HOT SPRINGS COUNTY COMMISSIONERS

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**Jim Ruby, Executive Secretary
Environmental Quality Council**

November 3, 2009

Mr. John N. Morris, Hearing Examiner
Environmental Quality Council
122 West 25th Street, Room 1714
Cheyenne, WY 82002

RE: EQC Docket No. 08-3101 WQD Ch. 1, Sec. 20 Agricultural Water Supply

Dear Mr. Morris:

We appreciate the opportunity to comment on the withdrawal of the proposed Chapter 1, Appendix H rules by the Department of Environmental Quality (DEQ). We support DEQ's withdrawal of the entire proposed rule. As written, the proposed Chapter 1, Appendix H rule would have significant adverse social and economic impacts on agricultural producers, the oil and gas industry, and the tax base in our county. While we support DEQ's recommendation that no changes be made to the existing livestock water quality standards, we are concerned that the proposed irrigation standards could have the effect of prohibiting the discharge of water that meets livestock standards. This would take produced water—relied upon in our county by agricultural producers, livestock and many species of wildlife—off the landscape. Also, we support the “grandfathering” and “landowner waiver” provisions in the proposed Chapter 1, Appendix H rule, but we are concerned those provisions will not withstand EPA review and legal challenges. Therefore, we believe it is essential that *any* proposed revision or implementation of the Chapter 1, Section 20 rule—whether it affects livestock water or irrigation standards—be taken as a whole and contain a non-severability provision that would invalidate it in its entirety if any portion is stricken. Furthermore, we asked DEQ and EQC to collect and analyze data to allow consideration of the socio-economic impacts of the proposed rule, and this effort has not been commenced.

By this letter, we request that EQC:

- Approve DEQ's withdrawal of the entire proposed Chapter 1, Appendix H rule. We do not believe the EQC has the legal authority to proceed with rulemaking on any portion of the proposed rule without a recommendation from DEQ, and therefore ask EQC not to further consider or adopt any provision of the withdrawn rule.
- Require DEQ to collect data and perform a socio-economic analysis of any proposed rule or permitting system related to the regulation of oil and gas produced water discharges prior to recommending it to the EQC.
- Require DEQ to invite representatives from the Commissions of Washakie, Hot Springs, Johnson, Campbell, and Weston counties to participate as members of any work group

assembled to consider revisions to or implementation of rules and policies related to the regulation of oil and gas produced water discharges.

- Require DEQ to invite from the Bighorn Basin (i) oil producers and (ii) agricultural producers who use produced water in their operations, to participate as members on any work group assembled to consider revisions to or implementation of rules and policies related to the regulation of oil and gas produced water discharges. Any changes in the existing rules and policies or the way in which the rule is implemented through WYPDES permitting will directly and materially affect oil and agricultural producers in the Bighorn Basin.
- Require DEQ to hold as many meetings in the Bighorn Basin as other areas of the state when considering revisions to or implementation of rules and policies related to the regulation of oil and gas produced water discharges, and accept comments and recommendations from residents of the Bighorn Basin.

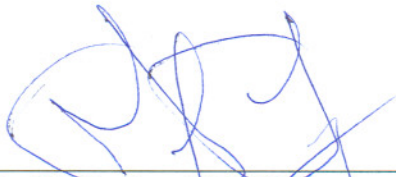
Finally, we request the EQC schedule DEQ's report concerning its withdrawal of the proposed Chapter 1, Appendix H rule for November 18, 2009, so it does not conflict with our regularly scheduled Commission meeting on November 17, 2009.

Thank you for your consideration of our comments.

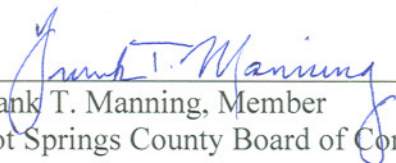
Sincerely,



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



John P. Lumley, Vice-Chairman
Hot Springs County Board of Commissioners



Frank T. Manning, Member
Hot Springs County Board of Commissioners