FILED

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL THE STATE OF WYOMING

SEP 2 9 2008

Jim Ruby, Executive Secretary Environmental Quality Council

In the Matter of the Appeal)	
OF CLABAUGH RANCH, INC.)	Docket No. 08-3805
FROM WYPDES PERMIT NO. WY0050601)	

REPLY OF DEPARTMENT OF ENVIRONMENTAL QUALITY/WATER QUALITY DIVISION

The Department of Environmental Quality (DEQ)/Water Quality Division (WQD) by and through its attorney, John S. Burbridge, Senior Assistant Attorney General, hereby responds to Clabaugh Ranch, Inc.'s. (Clabaugh) appeal of Yates Petroleum Corporation (Yates) WYPDES Permit No. WY0050601 issued by the DEQ/WQD, and states to the Environmental Quality Council (EQC) the following:

- 1. The DEQ admits the allegations contained in paragraph 1 of Clabaugh's appeal.
- 2. The DEQ admits the allegations contained in paragraph 2 of Clabaugh's appeal.
- 3(a). The DEQ admits the allegations contained in paragraph 3(a) of Clabaugh's appeal.
- 3(b). The DEQ admits the allegations contained in paragraph 3(b) of Clabaugh's appeal.

- 3(c). The DEQ admits the allegations contained in paragraph 3(c) of Clabaugh's appeal.
- 3(d). The DEQ admits that the outfalls are located up drainage from Clabaugh's ranch but denies the remainder of the allegations contained in paragraph 3(d) of Clabaugh's appeal.
- 3(e). The DEQ admits that discharge water may reach Clabaugh's ranch. The DEQ can not admit or deny whether discharge water will pass through Clabaugh's ranch for several miles as alleged in paragraph 3(e) of Clabaugh's appeal. The DEQ denies all other allegations contained in paragraph 3(e).
- 3(f). The DEQ admits that discharge water may reach Clabaugh's ranch. The DEQ is without sufficient knowledge to be able to either admit or deny whether discharge water will pass through areas of Clabaugh's ranch that serve as important grazing pastures of livestock as alleged in paragraph 3(f) of Clabaugh's appeal. The DEQ denies all other allegations contained in paragraph 3(f).
- 3(g). The DEQ denies the allegations contained in paragraph 3(g) of Clabaugh's appeal.
- 3(h). The DEQ denies the allegations contained in paragraph 3(h) of Clabaugh's appeal.
- 3(i). The DEQ denies the allegations contained in paragraph 3(i) of Clabaugh's appeal.
- 3(j). The DEQ denies the allegations contained in paragraph 3(j) of Clabaugh's appeal.

- 3(k). The DEQ denies the allegations contained in paragraph 3(k) of Clabaugh's appeal.
- 3(l). The DEQ denies the allegations contained in paragraph 3(l) of Clabaugh's appeal.
- 3(m). The DEQ denies the allegations contained in paragraph 3(m) of Clabaugh's appeal.
- 3(n). The DEQ denies the allegations contained in paragraph 3(n) of Clabaugh's appeal.
- 3(o). The DEQ denies the allegations contained in paragraph 3(o) of Clabaugh's appeal.
- 3(p). The DEQ denies the allegations contained in paragraph 3(p) of Clabaugh's appeal.
- 3(q). The DEQ denies the allegations contained in paragraph 3(q) of Clabaugh's appeal.
- 3(r). The DEQ denies the allegations contained in paragraph 3(r) of Clabaugh's appeal.
- 3(s). The DEQ denies the allegations contained in paragraph 3(s) of Clabaugh's appeal.
- 3(t). The DEQ denies the allegations contained in paragraph 3(t) of Clabaugh's appeal.
- 4. The DEQ denies each and every allegation not specifically admitted to in this response.

AFFIRMATIVE DEFENSES

- 1. Clabaugh has failed to state a claim upon which relief can be granted.
- 2. Clabaugh lacks standing to bring this appeal before the EQC.
- 3. The EQC lacks jurisdiction to hear this appeal.

WHEREFORE, the DEQ prays that the EQC enter an ORDER affirming the issuance of WYPDES Permit No. WY0050601 by the Department of Environmental Quality/Water Quality Division.

DATED this 29th day of September, 2008.

FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY

John S. Burbridge, # 5-2856

Senior Assistant Attorney General

Attorney General's Office

123 Capitol Avenue

Cheyenne, Wyoming 82002

307-777-6946

CERTIFICATE OF SERVICE

I, John S. Burbridge, certify that the foregoing Response was served by US. Mail, postage prepaid, and addressed correctly, to the following people on the 29th day of September, 2008:

Tom C. Toner Yonkee & Toner, LLP 319 West Dow Street P.O. Box 6288 Sheridan, Wyoming 82801-6288

Yates Petroleum Corporation 105 South 4th Street Artesia, New Mexico 88210-2118

Mathew Joy Jorden Bischoff & Hiser, P.L.C. 7272 E. Indian School, Suite 360 Scottsdale, Arizona 85251

John S. Burbridge