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Jim Ruby, Executive Secretary
Environmental Quality Council

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

**IN THE MATTER OF THE APPEAL)
OF PENNACO ENERGY, INC. OF)
CONDITIONS IN RENEWAL OF)
WYPDES PERMIT NO. WY0040797)**

Docket No. 09-3601

JOINT STIPULATION TO STAY PROCEEDINGS

Respondent Wyoming Department of Environmental Quality (DEQ) issued WYPDES renewal permit WY0040797 (renewal permit) to Petitioner Pennaco Energy, Inc. (Pennaco) on December 31, 2008, authorizing discharge of coal bed methane (CBM) produced water from specified outfalls to Wild Horse Creek and to Middle Prong Wild Horse Creek (Middle Prong) subject to certain conditions, including effluent limits intended for protection of “naturally irrigated bottomlands,” as defined in DEQ’s Section 20 Agricultural Use Protection Policy. On January 9, 2009, DEQ issued a minor modification to the renewal permit to correct two typographical errors. On February 27, 2009, Pennaco filed a petition for hearing before the Wyoming Environmental Quality Council (EQC) in the above-captioned case to contest effluent limits in the renewal permit relating to protection of naturally irrigated bottomlands. Pennaco and DEQ are the only parties in this case.

On or about February 27, 2009, DEQ published notice of opportunity for public comment on a proposed administrative modification of the renewal permit (proposed modification) to impose end-of-pipe limits for SAR on direct discharges to Wild Horse Creek and Middle Prong. The public comment period on the proposed modification runs to April 13, 2009.

On April 3, 2009, DEQ filed a motion in this proceeding to dismiss Pennaco’s Petition for lack of subject-matter jurisdiction over the Petition.

Pennaco's response to this motion must be filed and served on or before April 23, 2009.

The EQC is currently engaged in rulemaking involving proposed revisions to Chapter 1 of the Wyoming Water Quality Rules and Regulations, including new Appendix H, which interprets the Section 20 narrative standard for agricultural use protection by establishing procedures for setting effluent limits and conditions in WYPDES permits (including those pertaining to naturally irrigated bottomlands).

DEQ may impose conditions, including effluent limits, in WYPDES permits which are "not inconsistent" with Wyoming Water Quality Rules and Regulations (WWQRR). WYO. STAT. ANN. § 35-11-801(a). Pennaco's pending appeal of the renewal permit's effluent limits relating to protection of naturally irrigated bottomlands raises issues which are concurrently being addressed in the pending rulemaking involving WWQRR Chapter 1, Appendix H. Under these circumstances, Pennaco and DEQ (the Parties) now jointly stipulate as follows:

1. Further proceedings in Docket No. 09-3601 should be stayed until:
 - a) the EQC makes its final decision in the pending rulemaking involving Wyoming Water Quality Rules and Regulations (WWQRR) Chapter 1, Appendix H (Final Decision), and
 - b) following the Final Decision, a Pre-Hearing Conference is held in Docket No. 09-3601 pursuant to Chapter I, Section 9 of the EQC Rules of Practice and Procedure and the EQC issues an order governing further proceedings in this appeal.
2. During the interim between (a) the filing of this Joint Stipulation and (b) the later of (i) termination of the stay in accordance with an order issued by the EQC governing further proceedings after the conclusion of the Pre-Hearing Conference in Docket No. 09-3601 or (ii) ninety (90) days following DEQ's written notification to Pennaco, after the Final Decision, of DEQ's intent to issue the pending proposed modification of WYPDES renewal permit WY0040797:

a) DEQ will not issue the pending proposed modification of WYPDES renewal permit WY0040797, and

b) Pennaco shall operate in accordance with the contested renewal permit, as modified by DEQ on January 9, 2009, as well as the effluent limits for SAR, if any, in the most recent WYPDES permit WY0040797 issued prior to the contested renewal permit.

3. Subject to the terms of this Joint Stipulation, the Parties reserve their respective rights in this matter.

4. The Parties request that the EQC enter an Order approving, incorporating and binding the Parties to this Joint Stipulation.

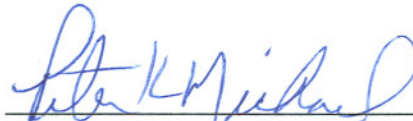
DATED this 10th day of April, 2009.

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