

FILED

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

MAR 19 2009

IN THE MATTER OF THE APPEAL)
OF CLABAUGH RANCH, INC.)
FROM WYPDES PERMIT NO. WY0039616)

Jim Ruby, Executive Secretary
Environmental Quality Council
Docket No. 09-3803

**RESPONSE OF THE 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 Pennaco Energy, Inc's., (Pennaco) WYPDES Permit No. WY0039616 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 is without sufficient knowledge to be able to 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

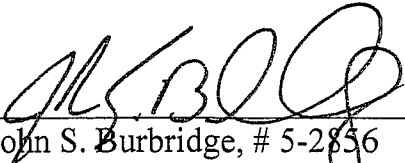
1. Clabaugh has failed to state a claim upon which relief can be granted.

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. WY0039616 by the Department of Environmental Quality/Water Quality Division.

DATED this 19th day of March, 2009.

FOR THE DEPARTMENT OF
ENVIRONMENTAL QUALITY



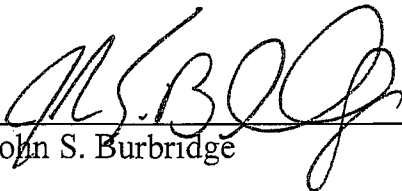
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CERTIFICATE OF SERVICE

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 19th day of March, 2009:

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John S. Burbridge