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FILED
MAY 15 2009
Jim Ruby, Executive Secretary
Environmental Quality Council

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

IN THE MATTER OF THE APPEAL OF)
JOHN D. KOLTISKA, AC RANCH, INC.,)
a Wyoming Corporation, PRAIRIE DOG)
RANCH, INC. a Wyoming Statutory Close)
Corporation, and PRAIRIE DOG WATER)
SUPPLY COMPANY FROM WYPDES)
PERMIT NO. WY0054364)

Docket No. 09-3805

AMENDED PETITION

JOHN D. KOLTISKA, AC RANCH INC., PRAIRIE DOG RANCH, INC., AND PRAIRIE DOG WATER SUPPLY COMPANY, pursuant to Wyo. Stat. §35-11-112 (a)(iv) and Chapter 1, Sec. 16 of the Rules of Practice and Procedure of the Wyoming Department of Environmental Quality petition the Environmental Quality Council of the State of Wyoming as follows:

1. Name and Address of Protestants and Protestants' Attorney. The names and addresses of the Protestants are:

- a) JOHN D. KOLTISKA, 516 Wyarno Road, Sheridan, WY 82801.
- b) AC RANCH, INC., 538 Wyarno Road, Sheridan, WY 82801.
- b) PRAIRE DOG RANCH, INC., 538 Wyarno Road, Sheridan, WY 82801
- c) PRAIRIE DOG WATER SUPPLY COMPANY, P.O. Box H, Sheridan, WY 82801

The names of the Protestants' attorneys are Kate Fox and J. Mark Stewart, Davis & Cannon, LLP, whose address is P.O. Box 43, Cheyenne, WY 82003.

2. Action Upon Which Hearing Is Requested. This is an appeal from the issuance of WYPDES Permit No. WY0054364 issued to Pennaco Energy, Inc., 3601 Southern Drive, Gillette WY 82718 ~~January 6, 2009~~ **April 29, 2009** by the Director of the Department of Environmental Quality (WDEQ).

3. Statement of Facts.

a. John D. Koltiska (Koltiska) is a rancher in Sheridan County who irrigates with water from Prairie Dog Creek and Wildcat Creek.

b. Koltiska is a part owner of AC Ranch, Inc., Prairie Dog Ranch, Inc., and is a shareholder in Prairie Dog Water Supply Company. Koltiska is president of both AC Ranch, Inc. and Prairie Dog Ranch, Inc.

c. AC Ranch, Inc., a Wyoming Corporation, is the owner of ranchlands in Sheridan County, Wyoming, portions of which lie on Wildcat Creek downstream of the discharges permitted by WYPDES Permit No. WY0054364 on that same creek.

d. Prairie Dog Ranch, Inc., a Wyoming Statutory Close Corporation is the owner of ranchlands in Sheridan County, Wyoming, portions of which lie on Prairie Dog Creek and Wildcat Creek downstream of the discharges permitted by WYPDES Permit No. WY0054364 on those same creeks.

e. Prairie Dog Water Supply Company (PDWSC) is Wyoming non-profit mutual benefit corporation which supplies irrigation water to its shareholders in the Prairie Dog Creek drainage. PDWSC supplies irrigation water to shareholders through conveyances whose points of diversion are located on Prairie Dog Creek downstream of the discharge permitted by WYPDES Permit No. WY0054364 on that same creek.

f. On ~~January 6, 2009~~ **April 29, 2009**, with the approval of the Administrator of WDEQ/WQD and the Director of WDEQ, WYPDES Permit No. WY0054364 (the Permit), was issued to Pennaco Energy, Inc. (Pennaco).

g. The Permit authorizes Pennaco to discharge water from a treatment unit or units into Prairie Dog Creek and Wildcat Creek in Sheridan County, Wyoming. The source of the water influent into the treatment unit is coalbed methane wells.

h. AC Ranch, Inc., owns lands to which water rights for irrigation from Wildcat Creek are adjudicated. These lands and their respective points of diversion are located on Wildcat Creek downstream of Outfalls ~~001 and~~ 002 identified in the permit.

i. Water under the Permit from Outfalls ~~001~~ and 002 will be discharged into Wildcat Creek which is a source of irrigation water for AC Ranch, Inc.

j. Prairie Dog Ranch, Inc. and AC Ranch, Inc. own lands to which water rights for irrigation are adjudicated. Water for irrigation on portions of these lands is diverted from Prairie Dog Creek downstream of Outfall 003 identified in the Permit.

k. Water discharged under the Permit from Outfall 003 will be discharged into Prairie Dog Creek which is a source of irrigation water for AC Ranch, Inc. and Prairie Dog Ranch, Inc.

l. PDWSC shareholders have water rights adjudicated to lands located along Prairie Dog Creek and Wildcat Creek downstream of the outfalls identified in the Permit.

m. Water discharged under the Permit could co-mingle with water in Prairie Dog Creek that is the source of irrigation water for those shareholders who make their diversions from Prairie Dog Creek at locations downstream of Outfall 003.

n. The Permit authorizes discharges that will not maintain the water supply in Prairie Dog Creek and Wildcat Creek at a quality which allows continued use of these waters for agricultural purposes without a measurable decrease in production in violation of Water Quality Rules and Regulations, Chapter 1, Sec. 20.

o. The Permit allows discharge of water with Electrical Conductivity(EC), Sodium Adsorption Ratio (SAR), and sodium concentration at levels in excess of the background levels of these constituents in Prairie Dog Creek at the point of discharge.

p. The Permit limitations on the effluent constituents EC, SAR and sodium concentration have the reasonable potential to adversely impact the agricultural use of the receiving waters. The numeric effluent limitations on EC, SAR and sodium concentration in the Permit are not derived from appropriate scientific methods in violation of Water Quality Rules and Regulations, Chapter 2, Section 5(c)(iii)(C)(IV).

q. The Permit conditions do not provide compliance with the applicable requirements of W.S. 35-11-302 and the Water Quality Rules and Regulations in violation of Water Quality Rules and Regulations, Chapter 2, Section 9(a)(vi).

r. The Permit allows discharges of treated water to alter the SAR of Wildcat Creek to levels that the DEQ has determined are likely to result in measurable decreases in production of irrigated crops and allows these levels to be exceeded up to fifty percent (50%) of the time during any twelve month period.

s. The Permit allows discharges of treated water to alter the EC, SAR and sodium concentrations in Prairie Dog Creek to levels that the DEQ has determined are likely to result in measurable decreases in production of irrigated crops.

4. Request for hearing. John D. Koltiska, AC Ranch, Inc., Prairie Dog Ranch, Inc. and PDWSC request a hearing before the Environmental Quality Council (Council) and request that the Council reverse the decision to issue permit WY0054364 and grant Protestants such other relief which the Council deems just and proper.

Dated this 15th day of May, 2009.



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CERTIFICATE OF SERVICE

I certify that on the 15th day of May, 2009, I served a true and correct copy of the foregoing by U.S. registered mail, return receipt requested, postage prepaid and addressed to:

Chairman Environmental Quality Council
122 West 25th Street
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