

**FILED**

NOV 12 2009

Jim Ruby, Executive Secretary  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF )  
JOHN D. KOLTISKA, AC RANCH, INC. )  
A Wyoming Corporation, PRARIE DOG )  
RANCH, INC., a Wyoming Statutory Close ) Docket No. 09-3805  
Corporation, and PRARIE DOG WATER )  
SUPPLY COMPANY, FROM WYPDES )  
PERMIT NO. WY0054364 )

**DEQ'S OBJECTION TO PRE-HEARING CONFERENCE ORDER**

Pursuant to ¶ 7 of the Wyoming Environmental Quality Council's (EQC) November 10, 2009 Pre-Hearing Conference Order in the above-captioned contested case, Respondent Wyoming Department of Environmental Quality (DEQ) objects to the identification of issues in ¶ 2.

The EQC's Pre-Hearing Conference Order (¶ 2) identifies the issues involved in this proceeding as:

- (a) ALL PARTIES: Was the methodology used to set the conditions for the permit scientifically appropriate to protect irrigation of alfalfa and pumpkins?
- (b) PENNACO: Are the permit conditions protective of irrigation of alfalfa and pumpkins?

DEQ's objections are as follows:

- 1) It is not clear what the purpose or significance is of linking certain issues to particular parties. Either these are issues for the evidentiary hearing or they are not. If they are, what difference does it make *whose* issues they are? The EQC's April 22, 2008 Pre-Hearing Conference Order in the Pumpkin / Willow Creek CBM general permits appeal (EQC Doc. No. 06-3816) listed seven issues (including 2 sub-issues) without linking particular issues to particular parties,

which did not create a problem in that hearing. If there is some purpose or significance to linking certain issues to particular parties, the parties need to be given notice what that is and the basis for it.

2) The November 10, 2009 Pre-Hearing Conference Order does not accurately reflect which parties are / are not posing which issues.

Petitioners raised issue "b" in their Petition and Amended Petition. The DEQ Rules of Practice & Procedure require the person objecting to a permit to file a petition setting forth the facts on which the protest is based and particular reference to the rules allegedly violated. DEQ Rules of Prac. & Proc. Ch.1, Sec.3(c)(iii). Petitioners' Petition and Amended Petition both specifically allege violation of Wyoming Water Quality Rules Ch.1, Sec.20 (issue "b"). Petition & Amended Petition, ¶ 3.n.

DEQ identified what is a more precise statement of issue "b" in its Prehearing Memorandum (p.3) as the single core issue in this case. DEQ did not identify issue "a" as a separate issue. Issue "b" (compliance with Ch.1, Sec.20) is the bottom line in this matter. Issue "a" may be a sub-issue or factor to consider in connection with issue "b," but it is not an end in itself. DEQ will address issue "a" in the evidentiary hearing, although Petitioners have moved (Motion in Limine) to restrict the EQC's ability to consider certain evidence relevant to issue "a."

3) The Pre-Hearing Conference Order should either list the issues without linking them to particular parties or else identify Petitioners as the party raising issue "a" as a separate issue, and identify "All Parties" as posing issue "b."  
DATED this 12th day of November, 2009.



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**CERTIFICATE OF SERVICE**

This certifies that true and correct copies of the foregoing DEQ'S OBJECTION TO PRE-HEARING CONFERENCE ORDER was served this 12th day of November, 2009 by United States mail, postage prepaid, or by hand delivery, and also by email, addressed as follows:

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M. Bann

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.