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FILED
OCT 16 2009
Jim Ruby, Executive Secretary
Environmental Quality Council

Attorneys for Pennaco Energy, Inc.

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
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) Docket No. 09-3805
Close Corporation, and PRAIRIE DOG)
WATER SUPPLY COMPANY from)
WYPDES Permit No. WY0054364)

**PENNACO'S MOTION FOR SUMMARY JUDGMENT
AND TO STRIKE EXPERT TESTIMONY**

Pennaco Energy, Inc. (Pennaco), by and through its attorneys Holland & Hart LLP, moves for an Order granting summary judgment on Petitioners' appeal of DEQ's issuance of WYPDES Permit No. WY0054364 dated April 29, 2009 (Permit). As grounds for this motion, Pennaco states as follows:

1. Petitioners seek reversal of the Permit claiming that the effluent limits will lead to a measurable decrease in alfalfa production in violation of Chapter 1, Section 20, and claiming that those effluent limits were not derived using appropriate scientific methods in violation of Chapter 2, Section 5(c)(iii)(IV) of the Wyoming Water Quality Rules and Regulations.

2. In a challenge to a Permit issued by DEQ such as this, both the Wyoming Environmental Quality Act and Wyoming Supreme Court precedent place the burden of proof

squarely on the party challenging a permit—here the Petitioners. In this Permit appeal, that burden of proof on Petitioners includes the requirement for reliable expert evidence to support an administrative agency decision.

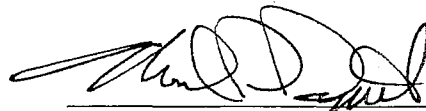
3. Petitioners' designated experts admit they are not qualified to give expert testimony that Petitioners rely on, they admit they do not have knowledge of the facts, and they fail to provide reliable opinion evidence to demonstrate Petitioners' claims.

4. Petitioners thus have no reliable expert evidence that the Permit limits are not protective and would violate Chapter 1, Section 20 or were not derived under appropriate scientific methods under Chapter 2, Section 5(c)(iii)(IV) of the Rules.

5. Without reliable expert evidence, Petitioners cannot meet their burden of proof and cannot amass the "substantial evidence" required by law to sustain a reversal of the Permit.

6. Pennaco respectfully asks the Council to strike Petitioners' unreliable expert evidence. Since Petitioners have no reliable expert evidence for the Council to consider, and since the purpose of summary judgment is to dispose of cases before trial that present no genuine issue of material fact, Pennaco respectfully requests the Council to grant summary judgment.

DATED October 16, 2009.



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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2009, I served the foregoing document to the following by:

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