

**FILED**

**NOV 04 2009**

**Jim Ruby, Executive Secretary  
Environmental Quality Council**

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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 )

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**PENNACO'S PROPOSED UNDISPUTED FACTS**

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Pennaco Energy, Inc. (Pennaco) submits the following as undisputed facts in this matter.

1. On April 29, 2009, the Director of DEQ issued a major modification to WYPDES Permit No. WY0054364 (Permit) to Pennaco. The Permit authorizes direct discharge of treated coalbed methane (CBM) water into Prairie Dog Creek through Outfall 003. The Permit authorizes discharge of treated CBM water into a reservoir (Paul3) on-channel to Wildcat Creek through Outfall 002. Discharges into the Paul3 must be contained except for certain overtopping from natural precipitation.

2. Petitioners challenge the EC and sodium limits for Outfall 003, the EC limit for Outfall 002, and the absence of an Sodium Absorption Ratio (SAR) limit for Outfalls 002 and 003 as violating Chapter 1, Section 20 of the Wyoming Water Quality Rules and Regulations (WWQRR).

3. WWQRR Chapter 1, Section 20 does not require effluent limits for EC, sodium or SAR in a WYPDES permit to preserve the ambient water quality unless those effluent limits would result in a measurable decrease of crops or livestock production.

4. Petitioners allege that the Permit limits will cause a measurable decrease in irrigated alfalfa production. Petitioners do not allege that the Permit will cause a measurable decrease in any other crop or in livestock production.

5. Petitioners designated Dr. George F. Vance and Mr. James A. O'Neill, II, as expert witnesses in this case. Both admit they are not irrigation experts.

6. Dr. Vance offers no opinion, expert or otherwise, regarding the scientific appropriateness of the methods DEQ used to derive the Permit effluent limits.

7. Mr. O'Neill offers no opinion, expert or otherwise, regarding the protectiveness of the Permit limits for EC and SAR.

8. Neither Dr. Vance nor Mr. O'Neill provide any opinion regarding DEQ's decision not to set SAR limits in the Permit.

9. Dr. Vance believes that any discharge would have to mimic background water quality in terms of EC and sodium to avoid burdens on downstream irrigators. Dr. Vance does not indicate whether the Permit limits are protective of irrigated alfalfa and does not indicate that the Permit limits will cause a measurable decrease of alfalfa.

10. Dr. Vance previously testified before the Council in October 2008 that Tier 1 limits are protective.

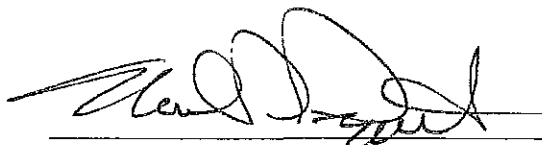
11. DEQ responded to complaints that the Paul3 reservoir was "leaking" and required Pennaco to install a pumpback station at the toe of the reservoir. DEQ has made a final decision

on the extent of and response to any leaking from the Paul3. Petitioners never requested Council review of DEQ's decision or actions.

12. Pennaco had water samples taken throughout Wildcat Creek in June 2009, and part of the testing of those samples included Carbon 13 isotopic testing. Pennaco conducted this and other isotopic sampling to trace potential CBM water in Wildcat Creek. Dr. William Schafer, Pennaco's designated expert with isotope analysis experience, conducted the sampling and determined that CBM water from the Paul3 reservoir was not reaching upper Wildcat Creek.

13. Mr. O'Neill and Dr. Vance are not experts in Carbon 13 isotope chemistry or analysis.

Respectfully submitted November 3, 2009.



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**CERTIFICATE OF SERVICE**

I hereby certify that on November 3, 2009, I served the foregoing document to the


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