

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

NOV 10 2009

Jim Ruby, Executive Secretary
Environmental Quality Council

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 WVPDES)
PERMIT NO. WY0054364)

DOCKET NO. 09-3805

PRE-HEARING CONFERENCE ORDER

THIS MATTER came before the Environmental Quality Council (Council) on November 4, 2009, for an informal pre-hearing conference. Deborah A. Baumer from the Office of Administrative Hearings served as the Hearing Examiner. Council member Dr. Fred Ogden was present at the conference, as well as Jim Ruby, Executive Secretary of EQC and Marion Yoder, Senior Assistant Attorney General. Pennaco Energy, Inc. (Pennaco) appeared by and through counsel, Mark Ruppert and Trey Overdyke. The Protestants, John D. Koltiska, AC Ranch Inc., Prairie Dog Ranch, Inc., and Prairie Dog Water Supply Company (Prairie Dog) appeared by and through counsel, Kate M. Fox and J. Mark Stewart. The Department of Environmental Quality, Water Quality Division (DEQ) appeared by and through Senior Assistant Attorney General, Mike Barrash and Assistant Attorney General, Luke Esch. This Pre-hearing Conference Order arises out of the November 4, 2009 pre-hearing conference.

1. MOTIONS

- (a) Prairie Dog informed the parties that it intends to file a motion or motions in limine to address, among other issues, the burden of proof and an issue identified by Pennaco before the Council. Protestants will file all motions on or before close of business, November 9, 2009. Responses will be due no later than close of business, November 12, 2009. The motions will be addressed at 1:00 p.m. on November 16, 2009, prior to the beginning of the hearing. The parties were

advised that no oral argument will be heard on the motions but Council may ask questions of the parties.

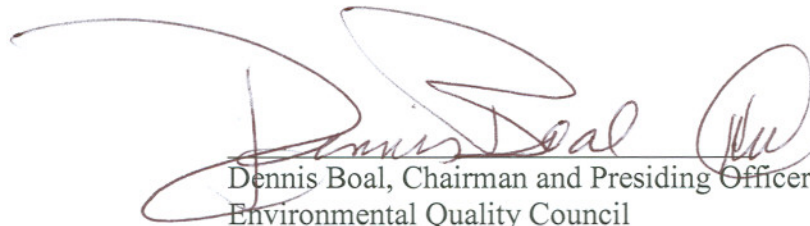
2. **ISSUES.** The following issues were identified as the issues involved in this proceeding:
 - (a) ALL PARTIES: Was the methodology used to set the conditions for the permit scientifically appropriate to protect irrigation of alfalfa and pumpkins?
 - (b) PENNACO: Are the permit conditions protective of irrigation of alfalfa and pumpkins?
3. **WITNESSES.** The parties identified the following witnesses who will be in attendance at the hearing and available to testify:
 - (a) DEQ will call as witnesses, Jason Thomas, Kathy Shreve, and Bill DiRienzo. DEQ has no may call witnesses.
 - (b) Prairie Dog will call as witnesses, John D. Koltiska, Dr. George Vance and Jim O'Neil, P.E. Prairie Dog also listed DEQ witnesses Jason Thomas and Kathy Shreve as will call witnesses and will conduct its direct examination of those two witnesses at the time of cross-examination.
 - (c) Pennaco will call as witnesses William Schafer, Ph.D., Warren W. Adams. Pennaco also listed John Koltiska as a will call witness and will conduct its direct examination of Mr. Koltiska during its cross examination.
4. **EXHIBITS.** In their pre-hearing memoranda, the parties identified the exhibits they intend to use during the hearing. The parties agreed that many of the exhibits are duplicative and stipulated to submitting a stipulated core set of exhibits on or before November 12, 2009. The parties may offer any of their remaining listed exhibits at the hearing with objecting parties setting forth their specific objections to those exhibits at that time.
5. **ORDER OF PROCEEDINGS.** Each party will have ten (10) minutes for opening statements. Following opening statements, the order for the presentation of evidence shall be as follows:
 1. DEQ (background information regarding the permit)
 2. Prairie Dog
 3. Pennaco
 4. Rebuttal

The Council will likely announce a limited time for closing statements.

6. **DATE, TIME AND LOCATION OF HEARING.** The hearing is scheduled for two and one-half days beginning November 16, 2009 at 1:00 p.m. and continuing through Wednesday, November 18, 2009. The hearing location remains set in Room B-63 of the Herschler Building.

7. **OBJECTIONS TO PRE-HEARING CONFERENCE ORDER.** The parties shall have until noon, November 12, 2009 to serve and deliver any objections to this Order.

SO ORDERED this 10th day of November, 2009.

A handwritten signature in dark ink, appearing to read "Dennis Boal", is written over a horizontal line. To the right of the main signature is a smaller, circular mark or initials.

Dennis Boal, Chairman and Presiding Officer
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CERTIFICATE OF SERVICE

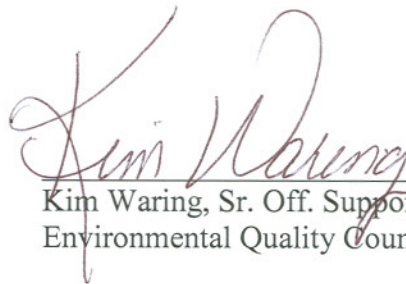
I, Kim Waring, certify that at Cheyenne, Wyoming, on the 10th day of November, 2009, I served a copy of the foregoing by electronic mail to the following:

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