

## Wyoming Refining Company Settles with 47 Litigants

On the evening of March 24 and the morning of March 25, 2002, a frozen valve at the Wyoming Refining Company plant allowed 20 tons of silica catalyst to escape into the air. Within hours, residents were experiencing physical reactions. The catalyst was initially dismissed by the plant's vice president of environmental affairs, Bob Neufeld, as sand, much like "wheat flour."

However, a Material Safety Data Sheet (MSDS) obtained by the Newcastle Action Group (NAG) and its regional affiliate, the Powder River Basin Resource Council, showed that the catalyst contained arsenic, chromium and nickel (three known human carcinogens) among other heavy metals. The first instruction under the sheet's environmental and regulatory section said that in the event of a land spill, people should be kept away. The sheet also stated that skin contact should be avoided, and the product kept out of sewers and waterways. This information indicated that the dust was a lot different from wheat flour, but it took weeks for the people of Newcastle to know what they'd been exposed to.

Six years later, the Wyoming Refining Company has agreed to monetary compensation for 47 people who were part of a lawsuit claiming health problems as a result of refinery emissions. As is standard in settlement agreements, the monetary amount must remain a mystery to all but those 47 people and their attorneys, along with refinery personnel.

One of parties wrote "We are not at liberty to tell the total amount of the



Newcastle Refinery

settlement. We have yet to meet with the "Special Master" who will decide what each person will receive. When that is done, we will not be able to tell what each received. That is a stipulation that the refinery put in the settlement agreement. To me, making changes at the refinery was my first priority. I did not get the changes at the refinery that I had hoped for, but we won; that should get someone's attention!"

Although most of the settlement was directly related to the catalyst spill, one of the parties had moved away from Newcastle before the spill occurred. She directly correlates her health problems to refinery emissions, not only because they preceded

the spill by years, but because her symptoms would abate when she was 10 miles out of town. In fact, her doctor told her to leave town, further advising her that there would never be a reason good enough for her to return to Newcastle because of the health issues she face.

Two plaintiffs signed the settlement agreement under duress, and one refused to sign altogether and has taken the case to a higher court.

The legal team for the case involved three attorneys: Jeremy Michaels and Nick Carter from Gillette, and Noah Kushlefsky from New York City. In a post-settlement interview Nick Carter said he felt the settlement had a "significant impact" on the refinery. For further information, contact Marcia Dunsmore: 307-941-1281 [marciad@rushmore.com](mailto:marciad@rushmore.com)

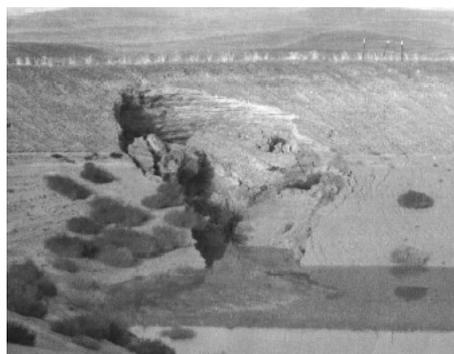
## Windsor Reservoir Blowout Was a Threat to Clear Creek

Late last year a two-month-old dam on a permitted reservoir holding more than 16.5 acre feet of sodium laden coal bed methane water blew out and spilled 10 acre feet—over 3 million gallons—down Town Draw outside of Clearmont, in Sheridan County. The water stopped just short of Clear Creek.

To date neither Windsor Energy nor DEQ has explained the cause of the blow out. Nor did they report the accident to those of us who were still using water from Clear Creek to irrigate hay fields and water greenhouse produce. Had the hole been lower in the dam, the remaining two million gallons of water in the reservoir would have spilled and likely reached Clear Creek and our crops. No warning would have reached producers. No warning was ever given.

DEQ inspectors easily traced the trail of sediment and salty water. Silt filled the irrigation ditch. Three days after the blowout water was still standing near the railroad tracks at Town Draw.

Not one mcf (thousand cubic feet) of gas has ever been produced from these wells. And according to research conducted by the Wyoming Geological Survey (WYGS), wells being developed in the Clear Creek Drainage have such a high ratio of water to gas that virtually no gas will ever be produced from this



Windsor Reservoir Blowout

drainage—no matter how much toxic water is pumped to the surface to threaten our livelihoods.

Continuing to produce water without producing any gas constitutes the waste of a public resource, the WYGS concluded, and the agency recommended a moratorium on drilling in the Clear Creek drainage.\*

This incident illustrates the fallacy of presuming—as our State Engineer has—that any amount of water pumped out of our aquifers for the remotest possibility of producing gas is a beneficial use of Wyoming's water. If these permitting and pumping practices continue, we will not only be losing our

groundwater, but we will be facing the increased potential for produced water to damage our crops.

Coalbed Methane production in this valley puts in jeopardy existing and potential agricultural production, with no corresponding public benefit from gas production.

**Carol LeResche**  
Powder River Member

*\*Editor's note: Based on their research findings, WYGS recommended a drilling moratorium in both Clear Creek and Crazy Woman Creek drainages. Please see the Jan.-Feb. issue of the Breaks for more information on the WYGS research.*

# Is Industry Paying its Fair Share of Taxes?

Western states that produce coal, oil, gas, and hard rock minerals are probably not getting sufficient tax revenue from the extractive industries operating in those states, a recently released report states. This is at a time when both Wyoming's gas and coal production are at a record high, and even lagging oil production is making a comeback.

"Overall, a state tax system should not overburden individual taxpayers in favor of industry, should treat similar taxpayers similarly, collect revenues efficiently, and provide revenues sufficient for the state's needs," said Bob LeResche, Chairman of the Powder River Basin Resource Council.

These principles can be found in *Mining Taxes in Ten Western States*, the preliminary report of a region-wide research and public education effort on how different states levy taxes on coal, oil and gas, and hard rock minerals such as uranium and gold. Powder River and the Equality State Policy Center (ESPC) are working with citizens groups across the west to find ways to bring in more minerals-based tax revenue in order to address current impacts from the extractive industries and set aside more reserve funds for the future.

"Wyoming's tax base is different from that of many states because we collect a significant amount of revenue from severance taxes on coal, oil and gas, and that is as it should be, because these non-renewable assets are leaving the state forever," said LeResche. "Logically, then, taxes from these severed resources should provide for our future, not just our present needs."

Pointing to "Sovereign Wealth Funds" in place in Alaska and several oil-producing countries that ensure that the benefits of an energy-based economy will be enjoyed after the boom is over, LeResche said, "We're on the right track in a minor way with the Wyoming Permanent Mineral Trust Fund, but no one has really looked at how much Wyoming needs to have in reserve when our non-renewable energy assets are gone."

Sarah Gorin, policy analyst with the Equality State Policy Center, feels that Wyoming's severance tax rates

could be increased without harming production and could be used to monitor the environmental performance of industries operating in the state. "Wyoming has given uranium producers a tax break based on the price of uranium, and what have we got now?" said Gorin, "But significant violations of land and water protection laws, in part because the state has not invested in enough staff to properly oversee activities out in the field."

"Time and again, when we work on severance tax issues," Gorin continued, "We hear lobbyists for the extractive industries threatening to move their operations elsewhere if Wyoming doesn't do what they want—like right now in Pinedale, where they say they can't bring in cleaner rigs unless they get to drill year-round. "In Colorado, they're thinking of raising severance taxes and the oil and gas industry is threatening to move elsewhere. You wonder where they think they're going to go."

"Playing one state off against another has got to stop," LeResche said. "As does blaming environmental protection for fewer wells drilled in this age of \$100 crude oil and similarly priced methane. The long-term economic health of the entire intermountain West depends on clean air, water and land, and thinking about how we're going to use the resources we have now to make the bridge to a new energy future. We can do that by working with other states to create forward-thinking tax policies that will support our region's needs now and for generations to come."

The Joint Revenue Committee will be taking up coal and helium natural gas valuation for taxation purposes during the upcoming interim session. There is one proposal on the table that suggests using a "direct cost ratio" to study coal valuation—which could allow industry to deduct certain "production costs" before the coal is taxed. Powder River will keep a vigilant eye on the proceedings.

For more information, or to get a copy of *Mining Taxes in Ten Western States*, please call Shannon Anderson at 307-672-5809 or Sarah Gorin at 307-760-8280

## Powder River Petitions Council to Revoke Siting Permit

Two Elk Generation Partners (Two Elk) received its Industrial Siting Permit on April 1, 1997 for a new mine-mouth power plant outside Wright. According to the permit application, construction activities were supposed to begin in the third quarter of 1997; however, since the permit was granted, no construction has occurred at the site.

Powder River has joined with the Sierra Club to petition the Industrial Siting Council to revoke the permit, as the company has violated the permit conditions and other requirements of the Industrial Siting Act.

It is important that companies follow the timelines set forth in their Industrial Siting permits because permits are granted based on an analysis of current environmental and socio-economic conditions—which have changed dramatically in the Powder River Basin since 1997.

For example, Two Elk would need to submit an updated housing plan and other information to appropriately address site specific and cumulative impacts of its plant.

Housing, and particularly the lack of affordable housing, continues to be a concern throughout the Powder River Basin. Other concerns such as increasing inflation rates and the high cost of living, as well as widening wage gaps, are also prevalent—in spite of the energy boom.

A new report from the Equality State Policy Center, *The State of Working Wyoming*, states, "Those who do not work in the energy industries or who do not own shares of production see little of the additional income generated by the boom."

With all of these issues, clearly the Industrial Siting Council plays a vital role in protecting the people of Wyoming from adverse socio-economic impacts of natural resource extraction and related activity. We hope this petition will allow the Council to continue to keep the best interests of Wyoming in mind.

Shannon Anderson  
Powder River Staff

**Powder River Basin Resource Council (Powder River)** is a grass-roots organization of individuals and affiliate groups dedicated to good stewardship of Wyoming's natural resources. Powder River was formed in 1973 and stands for the preservation and enrichment of our agricultural heritage and rural lifestyle; the conservation of Wyoming's unique land, minerals, water and clean air consistent with responsible use of these resources to sustain the livelihood of present and future generations; and the education and empowerment of Wyoming's citizens to raise a coherent voice in the decisions that will impact Wyoming residents' environment and lifestyle.

**Powder River** is a member of the Western Organization of Resource Councils (WORC), which is a regional network of seven grassroots community organizations with 7,000 members and 45 local chapters. WORC member groups are Dakota Resource Council, Dakota Rural Action, Idaho Rural Council, Northern Plains Resource Council, Oregon Rural Action, Western Colorado Congress and Powder River Basin Resource Council.

**The services** provided by Powder River include public education, community organizing and lobbying as permitted on behalf of its membership. Powder River is a non-profit, 501 (c)(3) tax-exempt organization.

**Membership dues:** \$30 for individuals, \$40 for families and \$20 for students and senior citizens. Powder River is dependent on contributions for its work; contributions, large and small, are welcomed.

### Active Affiliate Organizations

- Clark Resource Council (CRC)
- Newcastle Action Group (NAG)
- Pavillion Area Concerned Citizens (PACC)
- Ranchers & Neighbors Protecting Our Water
- Sheridan Area Resource Council (SARC)

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### Staff

Director-Kevin Lind  
Office Administrator-Stephanie Avey  
Organizers-Jill Morrison, Gillian Malone,  
Bill Bense, Shannon Anderson and Deb Thomas (in Clark WY.)

### Powder River Office:

934 North Main St  
Sheridan WY 82801  
Ph: (307)-672-5809  
Fax: (307) 672-5800  
Email: info@powderriverbasin.org  
Web: powderriverbasin.org

### Powder River Breaks

Editor: Gillian Malone  
Assistant Editor & Layout: Stephanie Avey  
Photos by Powder River staff and members

# Wyoming Legislative Wrap-up

The Wyoming legislature wrapped up its 2008 Budget Session on March 7th. The Governor approved a \$3.5 billion dollar budget for the next 2 years and signed multiple pieces of legislation into law.

The passage of landmark legislation on carbon sequestration was considered the major accomplishment of the session, while the big disappointment was the failure to pass legislation on the CBM water management issue.

With the lobbying help of our members, Powder River successfully got six amendments into the original bill.

The bill died on a tie vote on 3rd reading in the Senate. The ongoing importance of this issue however, ensures that it will show up—once again—as an interim priority for both the Agriculture and Minerals Committees.

The Legislative Management Council identified the following topics as priorities for the 2008 interim committee work. (These are the issues the legislative committees will work on over the summer and fall, that are important to our membership.) Interim committee work is likely to result in draft legislation for the 2009 General Legislative Session.

## Judiciary Committee

Priority #1 will be to address "unfinished business" on Carbon Capture and Sequestration—including eminent domain and forced pooling. The Management Council is allowing a 2 year study for the carbon capture and sequestration issues.

House Bill 89/HEA 18 recognizes that surface owners control the underground pore spaces where carbon dioxide could be stored or sequestered. Its companion, House Bill 90/HEA 25, gives the Wyoming Department of Environmental Quality the authority to regulate the long-term storage of carbon dioxide.

While Powder River was able to remove all references to eminent domain and condemnation in this year's legislation, the interim work will bring new challenges for protecting property rights. Whether condemnation of the surface estate will be considered necessary to access pore space—and how that will be carried out—will be the focus of discussion this summer and fall.

The Judiciary Committee will also consult emerging EPA guidelines on carbon capture as they fine tune the legislation to suit Wyoming's needs.

## Joint Revenue Interim Committee

The legislature passed a bill to tax helium—which industry promptly threatened to kill through litigation. The Revenue Committee will study this issue, and they will also look into valuing coal through the use of a "direct cost ratio"—which could cost Wyoming money in lost tax revenues.

## Joint Agriculture, State and Public Lands and Water Resources Interim Committee

The #1 priority for this committee will be state water issues and the need for some form of water management—with a focus on coalbed methane discharges and the effects on agricultural lands.

The #2 priority for this committee will be the cottage food industry, value added agricultural products, sustainable agriculture and unfair trade practices. The committee will consider what changes are necessary to protect agricultural producers and to update current laws.

The Committee plans to meet April 28th and 29th in Saratoga, and in September or October in Green River.

## Joint Minerals, Business and Economic Development

The #1 Priority for this committee will be the consideration of "Wyoming's energy assets, incentives and barriers for development." The committee will consider clean coal technologies and ways to promote and provide incentives for the development of commercial clean coal facilities in Wyoming. They will also focus on the full range of energy resources including conservation, uranium, wind, water and geothermal to determine the best uses for Wyoming.

CBM discharge issues are also listed under the #1 priority and outlined as follows: "The committee will review and consider various issues relating to CBM development as any new issues develop, including the use of water and watershed permitting." The committee will work with the Wyoming Pipeline Authority, the DEQ and the State Engineer's Office in considering this issue. The list of the #2, 3, 4 and 5 remaining priorities under the minerals committee range from economic development programs, incentives for the timber industry, workforce housing and training, federal natural gas pipeline safety requirements, DEQ landfill risk assessment and monitoring and energy transportation.



Governor Freudenthal signs Carbon Sequestration Legislation

## Select Committee on Legislative Technology

This interim committee will explore the possibility of electronic voting in the legislature and the use of web and video conferencing for committee meetings. Both pursuits could help advance good government practices in Wyoming by ensuring that all votes are recorded, and by increasing citizen participation in the process.

## Other 2008 Bills of Interest

### HB 55 Water well drilling and pump installation licensure.

The bill was resolved in conference committee by bringing back language from the House version that allows individuals to conduct drilling work on their own property or on leased acreage without a license. The CBM industry has also been exempted from this legislation. For final bill language go to:

<http://legisweb.state.wy.us/2008/Enroll/HB0055.pdf>

### SF11 Subdivisions large acre parcels

This bill passed both houses. The final bill allows counties, if they choose, to regulate large acre subdivisions, from 35 to 140-acre parcels. It also allows a landowner to subdivide up to 10 parcels from 35 to 140 acres without county oversight or regulation. For final bill language go to:

<http://legisweb.state.wy.us/2008/Enroll/SF0011.pdf>

### HB86 Reverse 911 Emergency Systems

This bill passed both houses and was signed into law by the Governor. The legislation allows for a reverse 911 emergency call system to homeowners in the event of an emergency. For final bill language go to:

<http://legisweb.state.wy.us/2008/Enroll/HB0086.pdf>

### HB119 National Animal Identification System

Unfortunately, Representative Walliss's bill to prevent Wyoming from participating in the expensive and cumbersome National Animal Identification System failed to get introduced in spite of Powder River lobbying and calls and emails from many of our members.

### HB 160 Cooperative Electric Utilities Rate Regulation

This bill, sponsored by Representative Edmonds and Simpson, attempted to provide the same exemption from Public Utilities Commission rate regulation for out of state rural electric co-ops that was passed for several Wyoming Co-ops last year. Powder River members, particularly those in the Clark and Parkman areas that would be impacted by this legislation, successfully lobbied members of the Senate Corporations Committee to kill the bill on a tie-vote.

Thanks to all Powder River members for your support and critical involvement in the Wyoming legislative process. You make the difference! For information on other bills or more details on interim study work, go to:

<http://legisweb.state.wy.us>

Jill Morrison  
Powder River Staff

# 2008 Barlow Award Projects

## Demonstrate “Creativity”, “Sound Science”

Powder River awarded two students the Bill Barlow Memorial Youth in Conservation Award at this year's Wyoming Science Fair, held at the University of Wyoming in March. The award, which memorializes the conservation legacy of Powder River founding member Bill Barlow, consists of a cash prize, certificate, and honorary membership in the organization. The Barlow Award is given for studies on Wyoming ecosystems, studies that consider impacts of development on the natural environment or our agricultural heritage, and studies that delve into the realm of renewable energy.

This year's winners were Tyler Graham, a middle school student from Riverton, and Chloe Cundall, a student at Greybull High School. Judges Stacy Page, Dennis Knight, and Michele Barlow chose this year's projects because they followed the basic principles of sound scientific research, demonstrated a high level of creativity and skill, and met the criteria for the award. Dennis Knight commented: "Both projects were quite novel and very well done. Their data analysis was thorough and it was obvious from our interviews that the students knew what they were talking about."

Tyler Graham's exhibit, entitled "Crematory Airborne Mercury Emissions" examined the role that human cremation has played in airborne mercury pollution. The project discussed ways to minimize mercury emissions and decrease adverse environmental impacts.

Chloe Cundall's exhibit, entitled "Bioremediation of Arsenic Contaminated Water by Mesophilic and Thermophilic Algae," researched how algae may reduce the cost of improving water supplies and ensuring lower levels of arsenic in drink-



Tyler Graham and Chloe Cundall

ing water. Chloe received the inspiration for the project by thinking about the role microorganisms play in the Thermopolis natural mineral hot springs.

"Tyler and Chloe responded to our specific questions. They were knowledgeable about their research and understood the possible applications of their conclusions," said Stacy Page. "Chloe's project could eventually have applications in energy development and also for water supplies in third world countries," she added. "Judging was a positive experience for me and I especially enjoyed being around polite young adults with a passion for their research."

Completing a science fair project is hard work and time consuming, but it also can have payoffs beyond the satisfaction of completing a project and finding the answer. In addition to the Barlow Award, Chloe accumulated seven other awards for a total of \$1600 dollars at the 2008 Wyoming State Science Fair.

Powder River staff and members thank the students for their novel and very interesting work. We also want to express our gratitude to our judges for devoting their time and energy to the event, and to Diane Gorski at the University of Wyoming for putting together another great science fair that brought together young leaders and their teachers from across our state.

If you are interested in contributing financially to the Youth in Conservation Award, or helping out as a judge next year, please contact the Powder River office.

**Powder River Staff and Members**

## Council to Consider “Rare and Uncommon” Petition for Sand Creek

After almost two years, the Wyoming Environmental Quality Council (EQC) will consider Powder River's petition for "Rare and Uncommon" designation of Sand Creek in the Wyoming portion of the Black Hills. The EQC will meet on June 24 at approximately 1:00 P.M. in Sundance, Wyoming, at the High School auditorium, to consider the "merit" of the petition. If the council rules favorably, the petition will move forward to a full hearing.

Powder River members voted at their 2006 Annual Meeting to pursue Rare and Uncommon designation for the blue ribbon stream after learning that a large number of hardrock mining claims were being filed in the area. The petition was submitted on May 17, 2007.

"If these mining claims were to be explored with heavy equipment, or if full scale mining were to take place, many of the natural values of Sand Creek would be diminished or entirely eliminated," said Powder River Board member Marcia Dunsmore, who assembled the background information for the petition. "We can't just stand by and watch that happen."

Sand Creek flows through the pristine northwestern Black Hills, where lush canyons support animals and plants considered rare or sensitive by the U.S. Forest Service and others. The northern goshawk, the northern flying squirrel, and a rare land snail share the surrounding forest with 71 species of rare plants.

Scientists characterize Sand Creek as an "Ice Age plant refuge," where the cooler and moister conditions allowed populations of boreal plants to survive as the climate warmed at the end of the last ice age, while similar vegetation retreated far to the north. Meanwhile, the Nature Conservancy has identified several sites within the Sand Creek area as the most important areas for biodiversity conservation within the entire Black Hills ecosystem.

The Wyoming Game and Fish Department designated the section below Ranch A near Beulah as a Class 1, "blue ribbon" trout fishery—renowned for its high density brown trout population. Wyoming's Department of Environmental Quality has classified the entire stream, from its headwaters to the Highway

14 Bridge, as a Class 1 "Outstanding Water."

The Sand Creek area offers hikers and campers the opportunity to experience old growth forest—which is increasingly rare, particularly in the Black Hills, according to the U.S. Forest Service. "[I]t is essentially unroaded and no large scale harvesting has taken place," the agency states in a description of the area that includes "some spectacular scenery along Sand Creek with cliffs and steep slopes of limestone outcroppings."

Rare and Uncommon designation, if granted, would preserve these qualities by prohibiting any mining operations that would "irreparably harm, destroy, or materially impair" the rare and uncommon values in the Sand Creek area.

To support Powder River's petition, please attend the June 24 EQC meeting in Sundance. The Council will consider Powder River's petition beginning around 1:00 P.M.

For more information, please call Marcia Dunsmore at 307- 941-1281.

## USDA Announces Renewable Energy Grant Program

Farmers, ranchers and rural small businesses wishing to install energy efficiency upgrades and renewable energy systems should be aware that USDA has released its NOFA (Notice of Funding Availability) for this year's Section 9006 clean energy grant and loan guarantee program.

The USDA has \$15.9 million available for 2008 grants, with a June 16,

2008 application deadline. Applications for loan guarantees must also be received by June 16th.

Further information on the program, including official application forms and templates, instructions and regulations can be found at [www.farmenergy.org](http://www.farmenergy.org).



# Animal ID Fraught with Controversy

Animal identification programs initiated by the US Department of Agriculture's Animal & Plant Health Inspection Service (APHIS/ USDA) have created a storm of controversy across the nation. A broad diversity of agricultural groups, and large and small livestock producers alike have protested the programs, citing privacy issues, the high cost to producers, misplaced liability, the potential for misuse of data, and the abuse of a system intended to track livestock disease as reasons for their opposition.

State programs have attracted similar attention. Although the Wyoming Livestock Board administers a livestock brand system that has been used successfully in Wyoming for many years, last year the WLB agreed to a contract with USDA/APHIS for a state animal identification program to be administered separately from the brand program. Wyoming received \$248,000 from the USDA in 2007 to develop the program, but because state programs have been so unpopular with producers, the WLB chose not to renew the contract with USDA for 2008.

To curb some of the controversy, USDA has initiated a voluntary state-by-state approach. However, some states across the nation continue to require mandatory participation in the programs and producers continue to question the

programs' intentions.

Wyoming State Representative Sue Wallis (R-Recluse) introduced a bill this year that would prohibit state participation in a national animal identification system. This bill—and continued focus by such livestock organizations as ICOW on the state ID programs—have kept the issue in the spotlight.

Some state officials, including WLB Director Jim Schwartz, believe that we need a "trace-back" or similar contact system in the event of livestock disease outbreaks. Many Wyoming producers agree, but feel that it should be a state system independent of USDA, and that it could be facilitated through the current, WLB-administered brand program.

The WLB plans to hold two public meetings to provide the opportunity for public input on the current program, and to explore how a trace-back system might be designed for implementation in Wyoming.

The first meeting is scheduled for May 14 in Riverton and the second will be during the State Fair in Douglas on August 13.

**Bill Bense**  
**Powder River Staff**

# Brazilian Packer to be USA's Biggest?

The JBS Swift Company of Brazil has announced plans to buy both National Beef and Smithfield for \$1.1 billion, a move that would create the nation's largest meat packer. If approved, this acquisition would reduce the number of majority controlling packer corporations from five to three.

JBS Swift is the product of a merger itself, JBS having purchased Swift last year in a deal that started this corporate giant on its industry-controlling feeding frenzy.

Equally alarming is the fact that JBS Swift is posturing itself to control five River Ranch cattle feeding operations, which are already owned by the largest feedlot company in the nation. These actions would totally engulf the already concentrated U.S. packer-feeder industry, directly affecting prices, markets and production in the western region, including cattleproducers in Wyoming that are trying to market their calves for a fair price.

The U.S. Department of Justice (DOJ), the executive branch agency that must approve this acquisition, has no history of denying such requests

involving corporate concentration or integrated mergers. Unless the agency asks for further information on the acquisition in the next few days, it could be a done deal by the time the *Breaks* goes to press.

But concentration and control of facilities in the US could be the least of our worries. JBS has origins in Brazil, a huge cattle producing nation. Will the buyout create a direct pipeline for more imported meats? Will it lead to control by the behemoth company of domestic cattle markets in the USA and Canada? Brazil doesn't have the best disease tracking record, and a Brazil connection in this country could seriously undermine the marketing of North American beef.

Further evidence of a many-headed giant is the fact that Sao Paulo based JBS-SA has received permission from the Central Bank of Brazil to open a bank in the US with \$17.8 million in starting capital.

Powder River, WORC and 50 other national and state organizations joined together and sent their concerns about the JBS acquisition to the Justice

Department. Senators Enzi and Barrasso also sent letters of concern to US Attorney General Mukasey, urging careful scrutiny of the merger proposal to ensure a free and fair marketplace. "The competitiveness of this sector is of vital importance to beef and lamb producers across the country, and especially in Wyoming," the letter said. "We request that your agency consider the effects of this proposal on livestock producers."

Wyoming Congresswoman Barbara Cubin was joined by South Dakota Senator Stephanie Herseth in expressing opposition to the proposal, and many other agriculture and livestock organizations including R-CALF USA are aggressively opposing the acquisition.

This is just the latest move in the trend toward monopoly control of our food supply, and it only underscores the need for immediate action on the stalled 2007 Farm Bill and other pieces of legislation that address this pressing issue.

**Bill Bense**  
**Powder River Staff**

# Powder River Attends WORC Ag Meeting

Powder River members and staff joined over thirty members of the WORC (Western Organization of Resource Councils) Agriculture, Trade, and Livestock committees in early March to brainstorm and reinvigorate campaigns on topics relevant to western livestock producers, farmers and consumers. Powder River attendees included Wilma Tope, Donley Damell, and Skip and Vanna Waters, with support staff Bill Bense and Kevin Lind.

Animal Identification, "trust busting" legislation, and market manipulation and captive supply in the livestock industry were a few of the issues debated.

The Captive Supply Reform Act—which almost made it into the Farm Bill but was later withdrawn—continues to be a critical part of reforms needed to open up the livestock industry to fair market practices. WORC is considering proposing captive supply reforms in a stand alone bill.

Other topics at the meeting included moving forward a proposed local meats purchase preference for schools and institutions. The recent recall of large

quantities of tainted meat in the school lunch program, combined with a variety of state and federal initiatives, could push this proposal to fruition.

The WORC Agriculture and Trade team is largely made up of working ranchers and farmers across the west, many of whom are also great thinkers. Considering the true constitutional principles that our forefathers envisioned to secure economic liberty for this country might be a paradigm shift for some of us, but these same principles apply today as they did then—And not only to agricultural producers, but to all folks struggling in the corporate and government controlled economy of the 21st century. We all deserve to share in economic prosperity as a result of our labors, whether we produce calves, crops or other commodities.

**Bill Bense**  
**Powder River Staff**

# Polluter Demands Immunity to Proceed with Water Study

## Access agreement would absolve contractor of damages

For almost two years now, residents of the Line Creek subdivision in Clark have been waiting for an investigation to be completed on the aftereffects of Windsor Energy Group LLC's 2006 gas well blowout. And contaminated domestic water wells in the subdivision are only part of the problem. Windsor now says the company and its contractor are ready to analyze groundwater movement under the residents' properties—but the offer comes with conditions that have residents fuming.

Terracon Consulting Engineers & Scientists notified residents on April 5 that they would require a liability waiver for any damage that measuring water wells could do to their land, their wells, and their private property. The Billings, Montana contractor pressed residents for a signature by April 11, saying the waiver was necessary before they could proceed with water well measurements from private wells and construction of "flow maps" of the contamination.

"We've been asking for these flow maps since 2006," said Clark landowner Sands Dickson, "But their conditions would make us totally liable for anything that happens to our wells during their investigation into the problem that Windsor caused. Who in their right mind would agree to that? Windsor should be accepting the liability for their contractor since they are the ones responsible for the problem and for the cleanup."

The testing procedure requires Terracon to pump high volumes of water from the wells, then disconnect the wells for 24 to 48 hours to measure how groundwater flows back into the system.

Residents have asked Wyoming's Department of Environmental Quality and Terracon for more time to consult their attorneys about the access agreement, arguing that the company's demands are unreasonable.

The DEQ, which is charged with protecting Wyoming's water quality, has declined to intervene, saying this is a dispute between two private parties. The access agreement is just the latest hurdle for landowners in the Clark community, who are seeking answers to a spate of problems that have plagued them since the August 11, 2006 blowout sent methane gas, drilling muds and liquid condensates high into the air from 225 feet underground, prompting the evacuation of twenty-five families from their homes.

What wasn't fully understood at the time is that the blowout also injected petroleum condensates and drilling fluid constituents into both the deep and shallow aquifers that homeowners rely on for their drinking water.

Although the DEQ issued Windsor a Notice of Violation, they ultimately fined the company a mere \$2,812.50, then encouraged them to participate in Wyoming's Voluntary Remediation Program (VRP)—which allows polluters to direct their own investigations and clean up their own contamination.

"The Voluntary Remediation Program essentially puts the fox in charge of the henhouse," says Clark landowner, Dick Bilodeau.

So far, Windsor and Terracon have drilled around 50 monitoring wells in the impacted area,

including five on Line Creek. They are also testing six springs that flow into the creek, and 20 private water wells. Tests of one drinking water well have yielded benzene levels 10 times the regulatory limits, while another well shows "diesel-range" organic contamination.

"Windsor has been dithering for more than 18 months while we sit here not knowing whose well will be impacted next," Bilodeau said "And now, instead of taking responsibility for their actions, they're negotiating in bad faith."

Property owners called on the DEQ for more time to consult attorneys about the stress the testing process could cause on private water wells and water sources—and the associated liabilities.

"This is just one more very sad example of how far Wyoming's state government has gone off the rails," said Bob LeResche, Chair of Powder River Basin Resource Council. "It seems that every week our press reports serious incidents of pollution—from the Clark blowout, to a CBM reservoir failure in Sheridan County, to DEQ's admitted failure to do their job regulating and monitoring uranium mining around Douglas.

"Here we are, rolling in dough from energy tax revenues, but with a government that still lacks the will to provide manpower, expertise and programs to deal with the growing contamination caused by oil and gas development in our state. Our public health and public resources are increasingly threatened, and nobody's home. Wyoming deserves more."

## Powder River's Newest Affiliate—PACC

Pavillion Area Concerned Citizens (PACC) is the newest affiliate organization to join the Powder River Basin Resource Council. We are a group of landowners and citizens who have come together to confront groundwater contamination, air quality, and public health issues, as well as other impacts of oil and gas development taking place in the Pavillion area in western Wyoming.

We believe that the irresponsible gas development and production practices of Encana, the energy giant operating in our small rural community, threaten the safety of our groundwater supplies in the Pavillion area.

Groundwater contamination has already been confirmed in three sites in Pavillion, with as many as five sites yet to be investigated. There are also at least eight contaminated domestic water wells in the area, because of buried unlined production pits and other "shortcut" operating practices of the company.

Pavillion residents believe that gas wells cannot be located this close to private water wells without problems, and that industrial development of this kind,

which uses toxic chemicals and produces toxic waste, does not belong in a residential setting.

EnCana claims they have not fouled our private wells, but we feel the evidence speaks for itself. We have appealed to the Wyoming Department of Environmental Quality for help, but so far the agency has done little to address our problems. We are confident that becoming an affiliate of the Powder River Basin Resource Council will help provide the voice we need to protect our water, our soil and our homes.

**John Fenton, Chair**  
**Pavillion Area Concerned Citizens**

*Editor's note: For an in depth account of the Pavillion community's experience with Encana, please see the January-February issue of the Breaks.*

## Powder River Hosts Uranium Meeting

Uranium mining companies are busily making plans throughout the West as a result of recent increases in the price of uranium. To prepare for the newest gold rush, Powder River played host to ten organizations from five western states—including Wyoming, North and South Dakota, Nebraska, and Colorado—at a March 15 meeting in Casper to discuss their joint concerns about uranium mining and its impacts on families and communities.

"In Wyoming, there are significant questions

about regulation and oversight of uranium operations," said Powder River Board Member Wilma Tope. "Citizens need to have a stronger voice in uranium activities, and we look forward to working with organizations from around our region to share resources and information."

Wilma's family, which owns a ranch in Crook County, Wyoming, has banded together with other residents to insist that state regulators ensure adequate protection of local water supplies. Wilma and

other leaders from Crook County have recently formed a new Powder River affiliate, Ranchers & Neighbors Protecting Our Water, which now has its own webpage on the Powder River site.

For more information, or to get involved in uranium issues, please contact Wilma at 307-896-4706.

**Shannon Anderson**  
**Powder River Staff**

# Recycling in the Land of Long Haulage

*Editors Note: The following article, by Samuel Western, was reprinted with permission from both the author and Rone Tempest, the editor of Wyofile, Wyoming's new website on "politics and public policy in the cowboy state." It appeared in Wyofile's on-line news on February 18, 2008.*

I am a recycling fool, but recently I've been pondering the petro-wisdom of schlepping a flattened tuna fish can from Sheridan to Portland. Recycling has always been a problem in the land of long haulage.

It takes a lot of diesel to haul paper, cardboard, cans, and glass from Wyoming to various paper or steel mills or scrap exporters on the west coast. If you're not careful, you'll burn as much energy as you save.

But now with the price of commodities sky-high, does recycling make more sense? This depends, mostly because fuel, too, has climbed and now shares a price bracket previously reserved for single malt whiskies.

The answer is mostly yes, but not easily so. In a state that—next to Alaska—has the fewest people per square mile, the classic Wyoming solution to garbage is to dig a hole and bury it. And the hole's called a dump, not a landfill. The idea of paying someone to take your garbage smacks of subversive activity.

As a result, Wyoming is, as one recycling expert said, "so far behind the eight ball in recycling we don't know what ball we're really behind."

Because few Wyoming landfills or recycling companies keep records, it's only a guess what percentage of its garbage gets recycled, but it's about three-to-five percent. The national average is 26.7 percent.

But this sorry status is changing, and pretty fast, too. The increase in recycling has less to do with the high price of commodities than the steep costs of running a landfill.

A few years ago, the town of Glenrock's director of public works, Dave Andrews, penciled out the cost of operating the local landfill. It came to a heart-halting \$168 per ton. Glenrock doesn't have much trash and that's a problem: the economics of scale hurts small operators.

"Whether you're dealing with one ton per year or 1000 tons per year, you've still got to have the same equipment and the manpower to run it," said Andrews.

Moreover, Andrews said the town had little enthusiasm for meeting the cost of building a needed new, lined landfill: \$100,000 per acre.

Then he figured out he could truck the town's waste 20 miles to Casper and get charged \$40 per ton. Even with the cost of fuel, this made sense. Besides, the less you carry and dump, the less you pay, an instant incentive to recycle.

Glenrock used full-cost accounting, an analysis that encompasses all economic impacts. This is an alien form of math in Wyoming. For decades, Wyoming municipalities did what we all do when we don't to pay actual costs: we lean on the mineral properties to subsidize us. Cities and towns put a mill levy on mineral properties. The individual trash tosser, paid little. This encouraged all of us to back our F-250's up to the pit and offload to our heart's delight.

Increasingly, municipalities (and individuals) now pay as they pitch. This means installing scales and introducing a tipping fee, the charge per pound (more commonly, per ton) of garbage brought into a landfill.

A scale at a Wyoming landfill is analogous to having a posted speed limit on our highways: It insults our sharply honed sense of self-regulation. They're tolerated because they're ignored whenever possible.

But we can't ignore this: out of 130 known Wyoming landfills, of which 51 are still open, roughly 80 have no groundwater monitoring system; only two are lined; 21 percent are leaching undesirables such as vinyl chloride, benzenes and various solvents into the water table. Eighty percent of Wyoming's water supplies come from groundwater. The Wyoming Department of Environmental Quality's Bob Doctor estimates remediation costs for these leaking pits will cost Wyoming between \$500,000 to \$2.5 million per site.

Which brings us back to why recycling now pays. Anything that can find a second use won't go in the ground. Landfills divert the big stuff: concrete, grass clippings, brush, tires, appliances—like old washers.

Open market recycling takes care of the rest.

Landfills are being centralized. That's another good thing for recycling. The more material you have in one place to recycle, the better price you'll get.

For example, one aluminum can, by its lonesome, is currently worth a little over a penny. But when joined by 27,200 of its closest relatives into an 800-pound bale, a can is worth about 2.2 cents. When baled and made into a truckload of 1.3 million cans, a can has nearly tripled in value.

Wyomingites toss about 1.1 tons of garbage per person per year, or six or seven pounds per day. One third of our waste stream, as they call it, is paper.

And it does go a long way to get reused. Aluminum cans typically go east to Anheuser-Busch's Metal Container Corporation; cardboard and paper travel to plants in Montana, Oregon, and Washington, sometimes China; steel cans and small scrap end up at the Nucor Steel plant in Plymouth, Utah.

But we're alleviating some of the petro-wisdom worry by using material locally. Heartland Biocomposites of Torrington grinds up old plastic milk jugs and water bottles (#2 High Density Polyethylene.) Heartland mixes it with wheat straw to make composite lumber like fence posts and decking.

Even glass now has a local use. Contractors in Campbell County, which imports most of its gravel from South Dakota or Johnson County, use crushed glass (called cullet) as filler around landscaping, septic drain fields, retaining wall backfill, and drain pipe bedding.

Two Wyoming companies shred old tires for drain fields and leach field filler.

Wyoming even has an e-waste company, Tatoine Electronic Systems of Cheyenne, that takes in printers, PCs, TVs, and monitors, breaks them down on-site, and sells the scrap.

And anyway, it turns out that my tuna can that got me thinking about this in the first place had a long journey just to get to Sheridan. It probably came from American Samoa, or the Philippines, or over 5,000 miles. That makes the 600 miles it needs to go get smelted in Utah look almost reasonable.

## Earth Day Activities Showcase Recycling

Today is Earth Day, and downtown Sheridan is readying itself for what promises to be a real celebration of "reduce, reuse, recycle" principles. Thanks to the Center for a Vital Community and a variety of businesses, organizations, local government entities and citizens, anyone strolling downtown between 3:00 and 6:00 will be able to visit a dozen or more booths in Grinnell Plaza featuring ways we as a community can practice these principles. Sheridan's shiny new, 32-yard front-loader recycling truck will be on hand to demonstrate how the new "roll-off" bins are picked up, people can learn where the seven drop-off sites for recyclables are located, and visits are planned to fifth grade class rooms all over the community.

"If you can capture fifth graders and teach them about the importance of recycling and other forms of environmental responsibility, they'll go home and educate their parents," Sheridan's Solid Waste Administrator, Charles Martineau told the Sheridan Area Resource Council (SARC) a couple of years ago. "And public education is the key."

Martineau came from Logan, Utah, a community that went from having no recycling program to a mandated program that served 100,000 people.

While Sheridan has no plans to make its program mandatory, businesses that participate will get a 30% reduction in their trash pick-up costs, and they also have the option of renting their own bin for \$10/month.

So far, Sheridan has baled five bales of mixed paper and one bale of plastic, according to Mike Paul, Solid Waste/Recycling Supervisor for the City.

Sheridan is currently accepting glass, although the glass crusher the city purchased has not yet arrived.

While most of the recycled materials collected in Sheridan will travel to outlets in Billings, Paul said, the crushed glass will be used locally as road fill.

The public has a responsibility in this venture too, according to Paul—not only in showing up with the materials, but in following the directions on the bins: making sure the containers are clean and label-free, and separating different materials from one another. "That can make or break a recycling program," he stressed,

adding that there is a \$750 fine or six months in jail for anyone caught putting the wrong items in the bins.

While both Paul and I had a hard time imagining the city throwing someone in jail for making that mistake, I did notice a young man serving out his

community service at the recycling center. Now that would be a fitting, and educational punishment.

**Gillian Malone**  
**Powder River Staff**

# Uranium Mine Under DEQ Investigation

Wyoming's only currently operating uranium mine, the Smith Ranch-Highland project operated by Power Resources, Inc., is under state investigation for what the DEQ describes as "a number of major long-standing environmental concerns at this operation that demand immediate attention."

The Smith Ranch-Highland site uses in-situ leaching (ISL) to remove uranium from the ground. The process has raised landowner concerns about protection of local and regional water supplies. ISL uranium mines can contaminate aquifers through "excursions," or leakage of the mining solution from the mining zone. Excursions and other violations, such as surface spills and evaporation pond leaks, often occur at ISL sites. According to DEQ's report, the Smith Ranch-Highland site "experiences spills on a routine basis."

The state is also concerned about groundwater restoration activities at the site, which, according to the report, are significantly behind schedule. During the ISL mining process, companies receive an aquifer exemption from DEQ and EPA, which exempts the aquifer used for mining from water quality standards. However, after mining is completed, the company must restore the aquifer back to pre-mining standards which often proves difficult. For this reason, some companies operating in Texas have convinced state regulators to lower their standards. Although Power Resources assures the public they will restore the aquifer they are using, the restoration process has already taken much longer than expected.

More information on the Smith Ranch-Highland investigation can be found in a recent *Casper Star-Tribune* article, "Probe Finds Uranium Mine Violations," available on the Powder River website.



Power Resources, Inc. In-Situ Uranium Mine, Wyoming  
 Photo Credit- Skytruth

## In this Issue

Wyoming Refining Company Settles with 47 Litigants.....	Pg 1
Windsor Reservoir Blowout was a Threat to Clear Creek .....	Pg 1
Is Industry Paying its Fair Share of Taxes?.....	Pg 2
Powder River Petitions Council to Revoke Permit.....	Pg 2
Wyoming Legislative Wrap-up.....	Pg 3
2008 Barlow Award Projects Demonstrate "Creativity", "Sound Science".Pg 4	
"Rare and Uncommon" Petition for Sand Creek.....	Pg 4
USDA Announces Renewable Energy Grant Program.....	Pg 4
Animal ID Fraught with Controversy.....	Pg 5
Brazilian Packer to Become USA's Biggest?.....	Pg 5
Powder River Attends WORC Ag Meeting.....	Pg 5
Polluter Demands Immunity to Proceed with Water Study.....	Pg 6
Powder River's Newest Affiliate-PACC.....	Pg 7
Powder River Hosts Uranium Meeting.....	Pg 7
Recycling in the Land of Long Haulage.....	Pg 7
Earth Day Activities Showcase Recycling.....	Pg 8
Uranium Mine under DEQ Investigation.....	Pg 8

## Save the Date

**April 28-29, 2008**

Joint Ag Committee Meeting, Saratoga:

<http://legisweb.state.wy.us/2008/Interim/Ag/Meetings/mtg0428.htm>

**April 29, 2008**

Hearing on Dry Fork Appeal, Cheyenne  
 Community Meeting on Uranium Issues, Hulett

**May 2, 2008**

Terry Tempest Williams, Wyoming Weather Reports Talk,  
 Gillette: <http://www.uwyo.edu/ttw/>

**June 2-3, 2008**

Joint Judiciary Committee (Carbon Sequestration)  
 (Venue to be announced)

**June 10-11, 2008**

Joint Minerals Committee Meeting, Casper

**June 24, 2008**

Sand Creek EQC Meeting, Sundance



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