

Powder River Breaks

A Publication of Powder River Basin Resource Council

January/February 2004

Volume 32, Number 1

PRBRC Instrumental in Landrey Well Replacement



Roland and Bev Landrey

On February 10th, seventeen months and ten days after Roland and Beverly Landrey lost their artesian well, they turned on their faucet and they actually had water. It's been a long haul according to Bev Landrey, who is particularly thankful for the kindness of independent well driller, Mark Blake and others who donated their time and expertise, and to PRBRC, who publicized the issue and rattled cages all

over the state until the situation was resolved.

From the beginning, the coalbed methane industry refused to take responsibility for the loss of the Landrey's artesian, even though drilling and dewatering activities were going on all around them. Bev contacted the State Engineer's office, the BLM, the Governor, their state representatives, even Senators Enzi and Thomas, and still nothing was done.

What should have gotten everyone's attention was a memo that PRBRC discovered in the State Engineer files from Oil and Gas Conservation

Commission Inspector Richard Cool to his boss, Don Likwartz, alleging that, not only was CBM almost certainly responsible for the well loss, but that these artesianians could "come back to life", spewing gas and mud and putting the public at risk. He warned in the memo that artesianians which have quit flowing should be plugged and cemented immediately. And he named four other "flowing wells" that had quit and then come back to life as the CBM development came nearer.

Bev is keeping watch over their old well, located a little south of their house, to see if it will come back to life. She mentioned that even Don Likwartz had said the old wells should be plugged and cemented, which may be an admission that the state is concerned about the public safety hazard.

The Landrey's new well is a record 1550 feet deep, and according to Bev, "it has a huge amount of gas in it. You don't dare hold a plate under the faucet when you turn it on," she laughed. The water's a little off-color, she said, but the plumber told her it would probably clear up after it's been run for awhile. "I'm just tickled to have water period!" she said.

Gillian Malone
PRBRC Staff

PRBRC Steps up to the Plate at R-CALF's Annual Convention.

In January, PRBRC members Skip and Vanna Waters, Judy McCullough and staff Pennie Vance attended R-CALF's Annual Convention in Denver, where they interacted with a host of experts on monopoly practices and fair trade issues. R-CALF is a rapidly growing, nation-wide agriculture organization that focuses on government policy and actions that affect the independent cattle industry.

PRBRC requested an early morning meeting with trade experts, Terry Stewart and Dennis McDonald, which prompted the launching of a national letter campaign to address the dangers inherent in the Australian Free Trade Agreement (AFTA). While Australia has huge numbers of cattle ready for import into the U.S. (mostly as beef), little to none of our beef would flow the other way. The Australian imports would literally flood the U.S. market, which would be disastrous for the U.S. independent cattle industry.

The AFTA letter encourages U.S. Senators from across the nation to

urge President Bush and U.S. trade negotiators to exclude beef from the AFTA, and to honor the preferential treatment which U.S. law gives to beef under its classification as a "perishable and cyclical" product. The entire R-CALF body endorsed the campaign.

PRBRC alerted Wyoming Stock Growers, Farm Bureau and Farmers Union to the campaign, and requested Senators Enzi and Thomas to sign on. While Senator Enzi did sign onto the letter, Senator Thomas refused to do so, stating his position as Chair of a Trade Subcommittee as his reason.

Since this campaign was initiated, the National Cattleman's Beef Association has rallied forth with a campaign of their own in which they request that beef be left in the AFTA, and that U.S. beef be given no preferential status.

William Hawks, Under Secretary for the USDA, who also attended the R-CALF convention, began his speech with the statement that his job was "to build bridges." Skip Waters took advantage of this opening to ask if Secretary

continued on page 8

Powder River Basin Resource Council
23 North Scott Suite 27
Sheridan, Wyoming 82801

Address Service Requested

NONPROFIT ORG.
U.S. POSTAGE PAID
SHERIDAN WY
PERMIT NO. 38



Encouraging Responsible Development Today...

_____ For Tomorrow...

Split Estate Bill Fails Introduction by Close Margin

Due to a concerted industry effort to block introduction, the "Wyoming Surface Owners' Accommodation Act," otherwise known as the "Split Estate Bill," is dead, at least for this year. House Bill 70 did take a couple of gasps before it fizzled, one in the House on Wednesday, and one in the Senate on Friday, and we can be certain that it educated a lot of people along the way.

A good deal of credit goes to the hard working members of the Joint Judiciary Interim Committee, who unanimously passed the bill out of Committee, and other legislators who saw fit to support the bill. Even Speaker of the House, Fred Parady—of a minerals background and squarely opposed to the legislation—featured the failed bill in a Letter to the Editor (Casper Star-Tribune, Feb. 16, 2004), promising to "work the issue again in the coming months."

The final votes were, in the House (where Rosie Berger sponsored the bill), 32 to 27 against introduction, and in the Senate (Where Ken Decaria picked it up and it became Senate File 90), 17 to 12 in favor of introduction. Twenty "Aye" votes in the Senate would have secured introduction. This tells us that, with enough time and energy invested in the next year into educating Wyoming citizens on the inequities of the split estate (and with increasing instances of industry having the upper hand at the "negotiating table"), this bill will sail through the 2005 General Session.

PRBRC staff and lobbyist Pennie Vance, who worked hard on this bill, along with many dedicated members and landowners, dismissed industry claims that the bill could put some drillers out of business or cost the industry billions of dollars. "The impact to the mineral industry would have been a blip on their financial radar screen," she said. She also pointed to recent Wyoming survey results that show strong support statewide for surface owner protections in split estate situations, which PRBRC regards as another reason for optimism.

Gillian Malone
PRBRC Staff

The following is a letter sent by Vice-chair of the Board, Clay Rowley, to PRBRC members and staff who worked together and with the Judiciary Committee to draft language for the Surface Owner Accommodation Act.



Clay Rowley, PRBRC Vice Chair

Defeat of introduction of HB-70 is a great disappointment to me and I'm sure it is to others as well. As it turned out, lack of active support from Wyoming's principle agricultural organizations, aggressive misrepresentations espoused by the oil and gas industry, and the reluctance of legislators to stray from the status quo ("keep government out of private matters," and collecting tax money while disregarding related injury to Wyoming landowners) were obstacles we were unable to overcome in this session. I'm sure this entire endeavor has left us with thoughts about what we did right, where we received support, what we did wrong, and what we can do to improve. I have written a post-defeat document to myself describing the entire effort with thought centered on results of this learning experience and how it might be applied in the future.

Generally I think the bill, as written, was as good as we could expect. The Joint Judiciary Committee was responsive to many if not most of our suggestions. I do feel it would be better to have the number of days between notification of intent to drill and completion of an executed surface access and use agreement extended to 120 days. Investigation into possible management of the bill's financial assurance provisions by Wyoming's six-member State Mediation Board and its USDA certified state mediation program should be made. The Board's impartiality is preferred over management of financial assurance by the Wyoming Oil and Gas Conservation Commission. However, with the influence of the oil and gas industry as great as it is at the moment, there is little chance that the bill, had it been introduced and passed, would have had much resemblance to the original bill.

Support from agricultural groups has been limited and of little value. While we were in Cheyenne we received a phone call on the answering machine and an e-mail from Suzy Noecker, Information Director of the Wyoming Farm Bureau Federation. She provided a response to the letter I sent to Marvin Applequist, Executive Vice President of the Wyoming Farm Bureau. Her e-mail message drifted from the Homestead Act, to WYSEI (Wyoming Split Estate Initiative), to the Judiciary Committee, to her ranch background. As for getting legislation passed she said, "We have not been silent, but I have not written a lot about the issue either." She said that she has contacted many people and "dreamt split estate for the last year and a half." [The legislators] know how invested I am in this...they need to hear from the people on the land," she said. I interpret this to mean that Farm Bureau has done very little and plans to continue to do very little to promote a surface ownership bill. The Wyoming Stock Growers Association has a similar approach. Indications are that both groups do not want government to infringe on the private rights of individuals to manage their own affairs.

We'll have to see where we go from here. If the PRBRC does feel it worthwhile to continue with the Surface Owners' Accommodation Bill, and I think it does, the renewed effort should begin right now. It is time to think about what we need to do to accomplish our objectives between now and the General Session in 2005.

Clay Rowley, Vice Chairman of the Board
Powder River Basin Resource Council

Powder River members, Clay and Gayla Rowley, Bernie Barlow, and Nancy Sorenson take part in a lobbyist training offered by the Equality State Policy Center on opening day of the Legislature."



Powder River Basin Resource Council (PRBRC) is a grass-roots organization of individuals and affiliate groups dedicated to good stewardship of Wyoming's natural resources. PRBRC 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.

PRBRC 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 PRBRC include public education, community organizing and lobbying as permitted on behalf of its membership. PRBRC 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. PRBRC is dependent on contributions for its work; contributions, large and small, are welcomed.

Active Affiliate Organizations

Concerned Citizens of Platte County
Cathy Wilson, Chair
Laramie County Resource Council
Mae Kirkbride, Chair
Newcastle Action Group
Lynnda Schroder, Chair
SE Wyoming Concerned Citizens
Rotating Chair
Sheridan Area Resource Council
Sarah Mentock, Chair
Tri County Resource Council
Ron Moss, Chair

Board of Directors

Chairperson.....Nancy Sorenson
Vice Chair.....Clay Rowley
Secretary.....John Heyneman Jr.
Treasurer.....Marcia Dunsmore
Bernie Barlow, Phil Hoy, Sarah Mentock, Gayla Rowley, Marjorie West, Cathy Wilson, Pat Wilson [CCPC], Mae Kirkbride [LCRC]

Staff

Director-Kevin Lind
Office Administrator-Stephanie Avey
Organizers-Jill Morrison, Gillian Malone, Sami Dinar, Pennie Vance (Laramie) & Vickie Goodwin (Douglas)

PRBRC Offices:

23 North Scott Suite 27
Sheridan WY 82801
Ph: (307)-672-5809
Fax: (307) 672-5800
Email: prbrc@powderriverbasin.org
Web: powderriverbasin.org

PO Box 1178
Douglas WY 82633
Ph: (307)358-5002
Fax: (307)358-6771
Email: doprbrc@coffey.com

115 1/2 Ivinson Ave Apt C
Laramie WY 82070
Ph : (307-742-3285)
Email: penniev@powderriverbasin.org

Powder River Breaks

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

PRBRC Challenge to CBM Drilling Permits Wins Remand

The Bureau of Land Management has remanded two Environmental Assessments back to the Buffalo Field Office as a result of Powder River's request for a "state director review." Powder River members and staff have been conducting selective reviews of BLM's permits to drill (APD's) and environmental assessments (EA's) to make sure they provide protection for landowner's, and to ensure they are in compliance with the BLM's Record of Decision on the Powder River Basin Environmental Impact Statement. PRBRC staff and landowners Bernie and Eric Barlow, and Tom and Helen Jones pointed out the flaws in two of The Bureau of Land Management's EA's and the accompanying APD's. "What we discovered is that the BLM is not doing a cumulative analysis of the impacts of discharging CBM water onto downstream landowners, said Bernie Barlow, who ranches on Dead Horse Creek. "We challenged these permits in order to protect our land."

Both Marathon and Williams submitted applications to drill on land above the Barlow and Jones ranches on Deadhorse Creek. The ranchers and PRBRC staff first submitted written comments to BLM in late October. They also met with BLM staff in November to reiterate their concerns in person. BLM is obligated by statute to respond in 10 days to a state director review request.

BLM's decisions on the requests were due in early December. Their decision on the Pennaco permits didn't come out until early January, and the decision on the Williams permits didn't appear until late January. BLM's explanation has been that these are "complex cases" that require more time to review. Also, according to BLM, the decisions to remand the EA's to the Buffalo office involved input from the Washington office.

Landowners Suffer Water Well Loss in Lower Prairie Dog Area

Three domestic water wells have gone dry in a Beatty Spur housing development since April 2003 and 4 more wells are expected to dry up as a result of coalbed methane drilling by the J.M Huber Corporation.

At the end of January, PRBRC and several homeowners sent a letter to BLM State Director, Bob Bennett requesting a review of 22 CBM permit applications approved by the Buffalo field office late 2003. The group says BLM failed to consider the impacts of the application on groundwater supplies, surface water, wildlife and air quality. BLM had 10 days to respond to the request, but they called PRBRC to inform us that they were back logged on processing State Director Reviews and it would be sometime before they would have time to address the homeowner's request.

The following letter by homeowner Allison Cole describes the turn her life has taken since her and her husband purchased their property 3 years ago.

January 14, 2004

Dear Sir(s):

I am writing this letter to inform many different people about the effects of coalbed methane gas drilling around my home site. I live north of Sheridan, Wyoming, just beyond the ten mile marker. As you turn onto County road 108, another two miles east will bring you into the Beatty Spur homeowners area. Specifically I am located in section 7, Township 57 North, Range 83West.

I moved to Sheridan, Wyoming in December of 2000. My husband was already working as an Emergency Medicine doctor at Sheridan Memorial Hospital. We decided to choose a home site in the wonderful wide open spaces on the outskirts of Sheridan. This was a beautiful place. The wildlife was numerous and varied. The stars were so vivid in the night sky that seeing the constellations clearly happened most every night. The days were so quiet that I could easily hear the shrill call of the eagles, falcons and hawks from inside the house. The coyotes were heard calling each other during the night in the hills around us.

During the fall of 2001 the environment around us began to change. Suddenly large trucks began traveling up and down the roads. Dust permeated the air. Exploration for coalbed methane gas had begun. We are surrounded by raw land. There are a few houses are located in the area around us, but we are the only group of homes concentrated together within the coalbed methane development area. Our quiet days and nights are gone. The noise of compressors is a continuous drone of whirring engines. The trucks that travel up and down our roads stir up dust and add to the general noise of the methane compressors. When the coalbed methane drilling runs into the night, the noise and

Ironically, BLM's decision was based on the same arguments that PRBRC presented to the BLM. The EA's:1.) Failed to address the cumulative impacts regarding CBM water discharges; 2) Failed to provide an adequate explanation and definition of best management practices and reclamation for downstream impacts; 3) Failed to provide all the information from the state on the CBM discharge permits before APD's were issued; 4) Failed to address West Nile virus concerns; and 5) Failed to provide crucial information on what components of the project are covered by the performance bond.

Regarding the concerns we raised about the destruction of native vegetation and soils in the ephemeral drainages, BLM stated they are in the process of developing monitoring plans through the Powder River Basin Working Group. They will be monitoring downstream impacts, they said, with a mind to develop mitigation measures to reduce those impacts.

"This is good news," said Barlow, referring to the remands. "But it's still going to be up to us as the downstream landowners to make sure BLM does the proper analysis, follows through with the monitoring, and does something about the impacts."

PRBRC has four other state director review requests pending on other CBM permits. One of the most serious appeals concerns the loss of domestic water wells in the Lower Prairie Dog area (see related article.)

**Jill Morrison
PRBRC Staff**



Reservoirs in the Lower Prairie Dog drainage for groundwater discharged by CBM production.

lights are distracting and can prevent a good night's sleep. During some of the drilling last summer we were awakened at three o'clock in the morning from the loud noises. The windows shook and the walls vibrated.

All of the Beatty Spur homeowners received oil and gas lease contracts from Dossett & Dosset in September 2001. This group had been hired by J.M. Huber to secure leasing rights for the mineral interest in our lands. We realized the importance of this situation. We knew that the coal seams must first be dewatered to allow release of the gas. All of our homes had wells that originated inside the coal seams. If these coal seams were dewatered we risked losing the water for our home sites. The Beatty Spur homeowners unanimously agreed that we did not want to risk losing the water to our homes due to the removal of coalbed gas. Although we shared these potential problems with Rick Briscoe, Bill DeLapp, and Ray Munson of J.M. Huber, we were told that we would not lose our water, and all we needed to do was sign our lease contract so that J.M. Huber could begin drilling for methane gas. No plan was set up at this time to address the possible loss of our water. In 2003 coalbed methane gas drilling was going on all around the Beatty Spur home sites. We were surrounded by coalbed methane wells dewatering the coal seams.

On April 10, 2003 my water well ceased to produce water. I called J.M. Huber and spoke directly to Rick Briscoe. Since that time JM Huber has been delivering water to my homesite. This has caused additional problems for my

Methane Industry Should Listen to Farmers

By Roger Muggli

The following Guest Opinion appeared in the January 17th Billings Gazette, and is reprinted here with permission from the author.

Barrels of ink have been spilled lately concerning the coalbed methane industry's annoyance at having to jump through legal "hoops" and over regulatory "hurdles" in order to develop methane in Montana. Take a recent quote from Mike Caskey, Vice President of MDU Resources' coalbed methane producing subsidiary, concerning settlement of a lawsuit over Clean Water Act violations. "We'll make sure we jump through the additional hurdles," Caskey said, after pointing out that the company didn't think it had been doing anything wrong.

Safeguarding Aquifers

Caskey and other out-of-state methane executives seem to think safeguards for our clean irrigation water and valuable aquifers are obstacles to development. They consider filling out the right paperwork a "hoop" and "hurdle," but they only do that after they've been sued. For farmers, ranchers and others who rely on that same water for irrigation, stock and our homes, those safeguards are the key to making sure we can pass on our operations to our kids and grandkids. For Caskey and his colleagues, it's a question of how much you can get away with, and for how long, instead of asking how can you do this right in the first place.

Take a recent Appeals Court ruling that salty coalbed methane wastewater is a pollutant and must be regulated by the Clean Water Act (CWA). MDU fought that ruling every step of the way, even asking the Supreme Court to take up the matter (which it didn't).

Salty Solutions

At the heart of the lawsuit was a simple premise: Before you discharge wastewater containing 30 to 50 times the sodium into a river or stream, get a permit. That's the only way to make sure rivers don't become too salty for irrigation, fish and plants.

MDU argued that because the water came out of the ground, it should-

n't be regulated - regardless of the concentration of salts and other pollutants and regardless of the amount of water they discharge to the surface. The 9th Circuit Court of Appeals disagreed, saying MDU's "interpretation ... is not correct, for it would allow someone to pipe the Atlantic Ocean into the Great Lakes and then argue that there is no liability under the CWA ... Such an argument cannot sensibly be credited."

MDU is now trying to get out of this ruling's requirements by spraying the wastewater onto the ground and calling it "irrigation." Subjecting perfectly good soil to high sodium methane wastewater and calling it "irrigation" is ridiculous - but they're trying it and will continue to try it until someone stops them.

Litigation Burden

To top it all off, Caskey wants us to sympathize with his company because it's been sued on so many occasions. I run an irrigation district with 300 members in addition to managing our family farm and running a feed pellet plant. I have better things to do with my time than sue the likes of Caskey to get MDU and other companies to follow the law. I have better things to do with my time than pester my neighbors and fellow irrigators for donations to help fund work to protect the water coming through the irrigation ditch so it doesn't destroy our soils and crops.

If Caskey and his colleagues want a green light for methane development in Montana, then I have some pretty simple advice: Stop focusing on what you can get away with, and start listening to the folks out here on the ground with legitimate concerns about your development practices. The laws that protect our land and water aren't paper formalities - they're essential to ensuring southeastern Montana's agricultural economy survives the methane boom.

Roger Muggli manages the Tongue and Yellowstone Irrigation District and, along with his family, runs a family farm and feed pellet operation near Miles City. He is a member of the Northern Plains Resource Council's volunteer Coalbed Methane Task Force.

"Big George" Discharge Water Toxic for Fish and Aquatic Organisms



CBM discharge into Burger Draw flows into the Power River.

Since the late 90's, PRBRC has been raising questions about the potential toxicity of CBM discharge water to fisheries and aquatic organisms. Finally, after more than five years of repeated requests to the Wyoming DEQ and the EPA to test the water, last summer the DEQ conducted what are called Whole Effluent Toxicity (WET) tests on CBM water in various areas and coal seams in the

Powder River Basin.

DEQ collected ten samples of CBM water from sites throughout the Powder River Basin, and then tested the water on fathead minnows and two aquatic invertebrate species, *Ceriodaphnia dubia* and *Daphnia magna*. According to the report, CBM discharge water from the "Big George" coal seam "exhibited characteristics of toxicity to the tested aquatic organisms." The report also said, "One of the two samples collected within the Big George coal seam exhibited acute and chronic toxicity for all species tested."

The tests further divulged that concentrations of dissolved lead were in excess of the permit limits at three sites tested, that total arsenic exceeded the limit at two sites, and that pH levels were elevated at one site.

DEQ required industry to perform additional tests, and these findings confirmed the original results. Anadarko, one of the primary operators in the Powder River Basin, discharges huge quantities of CBM water from the giant Big George coal seam into Burger Draw, which flows a short distance before running into the Powder River. In other words, the CBM water is already discharging into the Powder River. To make matters worse Anadarko has failed to meet the permit limits for barium.

Todd Parfitt, NPDES Program Supervisor for DEQ, told PRBRC that DEQ was in the process of developing WET limits for CBM discharge water for the Anadarko permits and possibly other permits discharging Big George CBM water. PRBRC is keeping a close eye on the issue.

Jill Morrison
PRBRC Staff

Are We Lowering the Bar on Best Management Practices?

The Western Governors' Association should be commended for their efforts toward developing best management practices for coalbed methane. It started out as a true exercise in democratic principles. The Association set out to create a forum for the exchange of ideas, information and experiences on the ground, and they invited participants from industry, from state and federal agencies, from academia, and from the ranching and conservation community to collaborate on a best management practices "handbook" that would set the standards for all future development. Nancy Sorenson, who attended the meetings, envisioned the document as representing excellence within the industry. "It would reflect the best that we can come up with," she said. "And the process was very balanced in the beginning."

Then things began to deteriorate. Some of the original participants weren't able to consistently attend the meetings, and others would show up in their place, and the process seemed to lose its focus, Sorenson recalled. The group only met twice after the idea was conceived at the June, 2002 Western Governors' Association Annual Meeting. But many hours went into hashing out the details for best management practices. Then, when the draft handbook was released in October of 2003, very few of Powder River's concerns were incorporated. "We had nothing to show for all those hours of work and travel," said Sorenson.

She and Bernie Barlow, and PRBRC staff, Pennie Vance attended the final Best Management Practices meeting in Denver on December 10th and 11th. The meeting was to be a culmination of the group's combined efforts. The idea was to use the two days to tighten up the draft into a final document that embodied everybody's concerns.

"There were lots of minerals people at the meeting," said Sorenson, who participated in the "landowner issues" section of the meeting. "And no attempt was made to balance who was there and who wasn't." She said there was one person with a laptop computer, who typed in whatever was decided by the group, but when everybody left at the end of the day, nobody had a hard copy of what had been agreed upon.

"One of the things that got struck between the time we thought we had

a final document and now," Sorenson, said, "Was a laundry list of landowner concerns. We knew there would be wordsmithing, but we didn't expect whole sections of the document to be deleted!"

"It's not so much that industry outnumbered us at the meeting," she added. "but they seem to be able to maneuver behind the scenes and get things accomplished that we aren't aware of."

Bernie Barlow, who attended the water management section of the meeting, said it took the whole first day for industry to admit there were any problems with their water handling practices. "Industry was going for the bare minimum on water management," she said. "They were putting water off-channel, in-channel, anywhere they wanted, and most everything we proposed was deleted."

On the second day at lunchtime, she said, just before the meeting disbanded, she sat down with Gary Beach of the DEQ and a few other people, and in one hour they put back the items industry had deleted. "All of the brainstorming from one hour resulted in what went into the final document," she said. These items included watershed planning, monitoring, water reinjection, and different water treatment options. "I felt pretty good about what ended up in the final document," she concluded.

The facilitators of the project recently sent a memo to participants thanking them for their hard work, and informing them that a second "iteration" of the handbook would be produced, in order to include comments they had received from a draft that was circulated in mid January, after the final meeting. Although they outlined a three-tiered process for incorporating these comments (based primarily on the degree of controversy of the comments) it's anybody's guess what will appear in the next "final draft."

Nancy Sorenson reminds us that we need to keep focusing on the best management practices as an exercise in setting the standards for excellence. "It's what we *ought* to be doing even if it's not what we're *doing*," she says.

Gillian Malone
PRBRC Staff

DEQ Promises Stricter Enforcement of 10-Acre Law

Last October, PRBRC Director Kevin Lind met with DEQ Special Projects Administrator Gary Beach to discuss concerns about the 10-acre exemption provided in Wyoming statute. The meeting included a contractor, a union representative and representatives from the Bureau of Land Management. After meeting with us, Mr. Beach planned to meet with the Wyoming Contractors Association.

In a memo to the participants, Mr. Beach provided the following background information:

The State Statutes, W.S. §35-11-401(e)(vi) allows for certain types of small mining operations to be exempt from the normal permitting requirements for non-coal surface mining operations. This exemption is commonly known as the 10 acre exemption. The EQC has defined the requirements of the Small Mine Exemption in Chapter 10 of the Land Quality Division regulations. Primarily, the application burden is less and there is no public notice requirement and opportunity for public comment. These application requirements include landowner authorization, a minimum bond of \$1,000 per acre of disturbed area, mapping and location requirements, and reclamation requirements. Mining operators should not commence until LQD has received their notification, bond and issued a letter of authorization. It is not clear as to what was the original intent of this exemption. It is suggested that originally it was only for 5 acres and was to be for test pits of the mineral resource. Later, the statutes were expanded to allow 10 acres and allow commercial operations (unverified).

His memo also stated that this particular group of representatives could find nothing of value about the exemption, and that they believed it should be

removed from the Environmental Quality Act. Failing all else, they felt it should be restricted to no more than five acres and used only for non-commercial "test pits." (PRBRC never learned what the contractors requested.)

Last week, DEQ Director John Corra sent a follow-up letter addressing our concerns. Although he said that some of our requests would require changes in statute that he is not inclined to pursue at this time, he did present an "action plan" to address some of the problems.

1. DEQ will specifically target operations which disturb more than ten acres with enforcement action, sending a clear message that "DEQ will not tolerate such practices."
2. Because the statutes provide no options to deal with "bad actors" (those operators who repeatedly ignore the rules), DEQ will "strongly encourage" operators who consistently violate the exemption to "modify their habits."
3. DEQ plans to meet with the Association of County Governments (as counties have some authority over these operations) to explore ways they can work together in regulating 10-acre exempt mines.
4. DEQ encourages all parties to assist in the oversight of these operations by contacting the agency with any suspicion of non-compliance by an operator.

Although Mr. Corra admitted that this action plan might not embody all of the elements we requested, he hoped it would provide a good start.

Vickie Goodwin
PRBRC Staff

Air Quality Task Force Plans Expansion of Monitoring Efforts

The Air Quality Task Force continues to move in the direction of investigating what makes up Newcastle's air. TSP (Total Suspended Particulate) monitors have been installed, and we are getting results from four monitors in and around Newcastle. VOC (Volatile Organic Compounds) monitors are in the works, and should be operating soon.

NAG (Newcastle Action Group) is thankful to WRC for funding a huge portion of this project. (A fine, issued to WRC by DEQ's Air Quality Division, due in part to a March 2002 catalyst release is a partial funding source-See related article.)

Once the VOC monitors are on-line, plans for sulfur testing will begin. Sulfur dioxide is a colorless gas with a pungent odor detectable by the human nose at concentrations of about 0.5 to 0.8 ppm. On a worldwide basis, SO₂ is considered to be one of the major pollution problems. It is emitted mainly from stationary sources that burn fossil fuels (coal, oil) such as power plants and refineries, or in the production of materials from sulfur bearing ores, such as copper smelting. Wood, natural gas, propane, and other common fuels used for home heating do not contain significant quantities of sulfur and, therefore, are not considered to be a major source of sulfur dioxide. Diesel fuel, and to a lesser extent gasoline, contain sulfur and are considered a contributor to sulfur dioxide in the ambient air. Sulfur dioxide is also emitted in significant amounts from natural sources such as volcanic eruptions. However, natural sources rarely play an important role in the urban sulfur dioxide problem.

Sulfur dioxide can be converted in the atmosphere to sulfuric acid aerosols and particulate sulfate compounds which are corrosive and potentially carcinogenic (cancer-causing). The health effects of sulfur dioxide appear to frequently be associated with high levels of particulates or other pollutants. The world's major recorded air pollution disasters have been associated with high levels of sulfur dioxide and particulates. The deaths attributed to these pollutants were due to respiratory failure and occurred predominantly, but not exclusively, in the elderly and infants. Sulfur dioxide may also play an important role in the aggravation of chronic illnesses such as asthma. The incidence and intensities of asthma attacks have been shown to be increased when asthmatics are exposed to higher levels of sulfates which are products of atmospheric sulfur dioxide reactions.

The Air Quality Task Force has been instrumental in generating interest not only in Newcastle's air quality, but in asthma research as well. A grant to fund asthma research for teens in the state has been secured, and health officials in the schools are working with state officials. We encourage anyone with any

breathing and/or sinus problems to ask their school nurse about this project.

We also encourage anyone with sores in or on their nose, or any part of their body to report this to the Public Health officers at 746-4491. Any illness that affects the immune and/or respiratory system should also be reported. This information is confidential, and is collected via the public health professionals, not our local doctors.

More folks are filling out "odor symptom" logs. These logs help the Air Quality Task force trace "where the action is" in Newcastle. Individuals with internet access, can request a log at doprbrc@coffey.com. People may also call 746-4110 when they detect an offensive smell in their neighborhood or anywhere in the community. Again, this is used for statistical information, which means leaving one's name is optional.

As we learn more about the "toxic soup" we breathe, more information will be made available. Scientists may know what ozone does, or what sulfur does to human health, but they may not have done a study on what happens when we mix all this stuff together.

Peg Christie
NAG Co-chair



Newcastle Refinery located in the middle of Newcastle

Consent Decree Settlement Helps Fund Air Quality Studies

In March, 2002, the Newcastle Refinery, owned by Wyoming Refining Company, spewed 20 tons of catalyst over the city of Newcastle. In October, 2002, the Wyoming Department of Environmental Quality Air Quality Division issued a Notice of Violation alleging that WRC had violated certain provisions of the Environmental Quality Act. The NOV listed other violations in addition to the spill. Below is a partial list:

- Failure to complete equipment testing within time period imposed by the permit.
- Exceeding emissions of sulfur dioxide.
- Failure to conduct monitoring on sour fuel gas system for hydrogen sulfide.
- Failure to submit a quality assurance program by the appropriate date.
- Lack of a test protocol or test data to verify the accuracy of the fuel gas heater content meters on a timely basis.
- Inability to calculate nitrogen oxides emissions by the permitted method.
- Failure to perform emissions testing and provide test results in a timely

manner.

- Continued operation of equipment when key valves were known to be malfunctioning (which directly contributed to the catalyst release.)

Rather than going to court over the violations, Wyoming Refining Company entered into a "Consent Decree" with DEQ, which means that WRC never admitted to the violations, nor did DEQ retract their allegations.

To settle the NOV, DEQ acknowledged that WRC has taken all measures and installed the necessary equipment to abate the alleged violations. Wyoming Refining Company (without admitting any of the facts alleged and without admitting liability) agreed to pay DEQ/AQD \$255,000. Of the \$255,000 fine, WRC paid \$117,500 to the Department of Environmental Quality, and the remainder is to be used for numerous clean-up projects, of which the testing being done by the Air Quality Task Force is included.

Vickie Goodwin
PRBRC Staff

CCPC Visits Wyoming Premium Farms

On a windy, chilly November day, Cathy Wilson and Vickie Goodwin visited three sites where Wyoming Premium Farm raises confined hogs. The purpose of the trip was to see the covers on the lagoons, view a completed methane digester and generally learn what WPF is doing to alleviate the odor problem from their large confined swine feeding operation located near Wheatland, WY.

WPF manager Doug DeRouchev drove us around in a truck that definitely smelled like hogs. On the way out, Mr. DeRouchev told us that the covers were supposed to last 3-5 years but were tearing around the edges (most likely from exposure to sun.) He said the covers cost \$250,000 a piece, and that he was in negotiation with the manufacturer about who would pay for replacements. He claimed the manufacturer did not use proper UV coatings.

First we went to Finisher 2, to see the cover on the lagoons. WPF is in the process of building a solid separator there. Solids will be given to local farmers for fertilizer. DeRouchev pointed out gas bubbles in the lagoons that indicate the process is working. There was a bit of odor there, but not totally unbearable.

Mr. DeRouchev explained the process for replacing lagoon covers. To remove an old cover, workers have to mount a grinder on an oar and cut the old cover in half. When replacing a cover, they have to take a row boat across the lagoon, pulling the cover behind. He told us that he performs this task himself to show his employees that he will do dirty work too.

Next we went to Finisher 1 where a digester is being built. As the effluent enters the concrete structure, the gas rises to the top and is sent through a machine that turns it into electricity. Vents are used to allow excess gas to escape. This digester is much larger than the one that is up and running at the Farrowing site. Digesters provide enough electricity to power the digesting process with some to spare. WPF plans to grow hydroponic tomatoes using the excess heat from the large digester.

DeRouchev told us that WPF is shipping three loads of processed hogs a month (540-580 hogs per load) to Japan. They are also sending some hogs to Costa Rica.

As we drove around we questioned Mr. DeRouchev about information he

had provided. When we asked about water quality, he assured us the water was fine at all the facilities, although people were free to drink the bottled water the company furnishes.

Mr. DeRouchev described the 36-member work force at Wyoming Premium Farms as 50% "stable" (people who stay longer than a year), 25% "mobile" (these folks don't stay too long), and 25% "from South Africa." When we asked why he employed South Africans, he explained that the unemployment rate in Platte County is low enough that people don't need to work at the hog farm. Especially young people don't want to work here, he said. Not only are the South Africans "good, hard workers," he added, but "they look just like us." These people can't make as much money in South Africa as they do here, DeRouchev said. One worker supposedly went home with \$14,000 in travelers checks after working here 6 months. (WPF provides housing.) Then he volunteered that the workers can't be left unattended because "things break."

As we were driving, DeRouchev brought up the idea of composting the dead pigs. They would be kept in a separate building, in order to control odor, and the pigs would be layered with straw and sawdust. He said that hog producers are required by law to incinerate or haul their dead animals off-site, whereas feedlots can just bury their dead stock. [We question that assertion.]

Although DeRouchev maintained that composting is much more "environmentally friendly" than incineration, he also admitted that it takes 8 gallons of diesel to incinerate one hog. CCPC members will be watching to see if he actually applies for a permit to compost.

A last bit of wisdom from DeRouchev was that he had tried using hog meat as bait. "Coyotes won't eat the dead hogs," he said. Perhaps that's a lesson for all of us.

Cathy Wilson, CCPC Member
Vickie Goodwin, PRBRC Staff



Colorado House Passes Renewable Energy Standard



A bill has been introduced in the Colorado legislature requiring Colorado's investor owned utilities to obtain 15 percent of their power from renewable resources by 2020. The law would gradually increase the portion of electricity produced from wind, solar, small hydroelectric, biomass and geothermal energy from 900 megawatts by 2010 to 1800 megawatts by 2020. House Bill 1273, sponsored by the Speaker of the House Lola Spradley (R-Beulah) passed the House Transportation Committee on a vote of 12-1 and just a few days later passed in the House by a 39-26 vote. It is currently awaiting action in the Senate where, as history has proven, it is expected to face a tougher road.

In a recent study Ron Binz, a consumer advocate and energy consultant, determined that wind power would be cheaper than electricity generated from natural gas. Binz, former director of the Colorado Office of Consumer Counsel, said wind power is competitive at current natural gas prices and would become more attractive under forecasts for even higher gas prices over the next twenty years. The study goes on to say that assuming continued strong price increases for natural gas, consumers would save 20 to 31 cents a month under a mandatory renewable bill and that savings could increase up to 75 cents a month when gas prices spike, as they did in 2000 and 2003.

A Renewable Energy Standard will add more wind energy into the gen-

eration mix—diversifying our power. Wind is one of the least expensive forms of new electricity (cost competitive with new coal) and will help protect ratepayers from natural gas price spikes. Wind farms will also bring in much needed, quality, long-term, high paying jobs, and can bring added income to landowners.

Fourteen states have adopted renewable energy requirements for utilities including: New Mexico, Texas, Arizona, Nevada, Minnesota, Maine and New Jersey, to name a few. Colorado conservation groups are hopeful that this will finally be the year the Colorado legislature commits to a Renewable Portfolio Standard (RPS).

Similar legislation was attempted in Wyoming last year, but failed. PRBRC is dedicated to pursuing RPS legislation again in next year's General Session. We have launched a public education campaign on the benefits of RPS to Wyoming and to society as a whole, and we are committed to working with other entities in the state, including the Governor's Office, to accomplish our goal.

Sami Dinar
PRBRC Staff

R-Calf Continued from page 1

Hawks was familiar with the "WORC Petition" (which requests that USDA address the concentration issues in the livestock industry.) He then pointed out that the Petition has been languishing at USDA for years. Hawks replied that he was indeed familiar with the Petition, and that it had recently been the subject of discussion within the Department. He even agreed it was time the Petition was addressed but refused to give us a time line. Then he warned us that we "may not like USDA's reply."

When Sec. Hawks brought up BSE (Mad Cow Disease), Pennie requested that the USDA immediately implement Country of Origin Labeling (COOL), both as an emergency measure to address the crisis, and to promote consumer confidence. USDA has implemented other emergency measures, she pointed out. Hawks said there was no law on the books that would give him the authority to implement COOL, whereas there were laws giving him authority to implement the other measures. However, in a later conversation with Skip (who reminded him that the COOL law *is* on the books), Hawks said if we could find an attorney willing to grant him the authority to implement such a measure, he'd consider the request.

Jan Michael Zavisian, Deputy Attorney General from Colorado told the audience that state attorneys general from across the U.S. have been working collectively to enforce federal anti-trust laws on behalf of the states, with finan-

cial support from the federal government. Zavisian informed us that the state attorneys general have far more power than most people realize. This information could be useful for PRBRC and all WORC groups, given that we have had no success in engaging the U.S. Attorney General's office in addressing anti-trust issues in the livestock industry. Besides consumer fraud, price fixing at retail businesses, and bid rigging on public and other projects, individual state attorneys general have been involved in state contract agriculture, such as local grower contracts.

Dr. Roger McEowen of Kansas State University brought to our attention a lawsuit in which the courts ruled against Ag giant Tyson Foods, holding them responsible for environmental damages caused by one of their "independent" contract growers. In that case, Tyson was told they could not divorce themselves from legal responsibility simply by engaging the growers in a "contractual arrangement," because Tyson virtually "owns" and controls every aspect of the contractor's operation. This court decision throws new light on the true nature of these contractual arrangements.

**Pennie Vance
PRBRC Staff**

Landowner's Water Well Loss Continued from page 3

home. It was July when the next house within the Beatty Spur area lost their water. A third house lost their water well in September.

After I informed Rick Briscoe that my water well was no longer producing water, I had daily and regular visits from John Cummings, an engineer for J.M. Huber, as well as other people Huber brought in to examine my well. Rick Briscoe told me every time I talked to him that this was necessary because he was not convinced that J.M. Huber operations contributed to the loss of water from my well. He told me, "I am not convinced that the integrity of your well is not the problem." Van David from David drilling was here, hired by Huber, raising and lowering my well pump to prove it was a problem of the well or the pump that had caused the loss of water.

This activity continued to the point that my husband Richard and I felt intimidated, and thought it necessary to hire Benjamin J. Schiffer, a professional geologist with Environmental Design Engineering Consultants. Benjamin worked for us from May 1st through August 13th. Benjamin was also able to put together information for us that showed that the static water level of 3,570 (noted in 1996 when the well was drilled) had now dropped. The new static water level is 3,506. This is a nearly 65-foot drop in the water level. Not only had the water level dropped, but significant water quality changes occurred as well. My water turned into a muddy, gas filled trickle.

My water well is located in the Anderson Coal aquifer. From 2000 through April 2002 the Wyoming Oil and Gas Conservation Commission website showed that in excess of 4.9 million barrels, or 206,634,000 gallons of water were withdrawn from the Anderson Coal aquifer. The drilling and dewatering of

the coal seams has continued. There were 27 coalbed methane wells located in the surrounding 6 sections that were installed into the Anderson Coal and producing when my well became inoperable in April of 2003. Further drilling and dewatering may alter these aquifers beyond the possibility of recharging or returning to their original state.

I now know that J.M. Huber has submitted an application to the Bureau of Land Management for approval of 22 federal wells on Lower Prairie Dog road. I also understand the BLM has approved nine of these wells. The landowners in our area were not informed by J.M. Huber that these wells would be drilled. We have not received any information regarding mitigation measures from J.M. Huber in the event that more of our home site wells are impacted with loss of water due to dewatering of the coal seams. For these reasons I request a state director review request of this project.

The drilling for coalbed methane gas in the Beatty Spur homeowners area has threatened our single largest investment, our home and our land. Our financial security is at risk with the loss of water at our home site. In addition this drilling has altered the character of our surroundings. It has polluted the air with noise and dust. Our once scenic surroundings are now scarred with electrical three-phase power lines, coalbed methane well sites, compressors and slash roads. The wonderful, wide open, countryside we came to love at our Wyoming home site has been irreparably altered.

Thank you for your attention to this matter.

Richard and Allison Cole

CCPC Year in Reveiw

At the January, 2004 meeting of the Concerned Citizens of Platte County (CCPC), PRBRC's Wheatland affiliate, members reviewed their accomplishments for 2003.

On January 17, 2003, after waiting nearly a year, CCPC members presented a petition to the Environmental Quality Council on strengthening the odor standards for large confined swine feeding operations. About a hundred people showed up to hear almost nine hours of comments. CCPC's KD Kneeburg began with a well researched and documented presentation, followed by several expert witnesses. Members of the community expressed their support, and only three hog industry representatives spoke against the petition.

CCPC members then spent hours in detailed responses to the comments. When they learned that three members of the Environmental Quality Council had visited Wyoming Premium Farms, CCPC members wrote letters to the editor and submitted a guest editorial to the Casper Star Tribune. In the end, the petition was denied, but the Air Quality Division of the Department of Environmental Quality presented a program for stronger enforcement—a definite victory for the people in Wheatland and Albin who live near these hog factories. "DEQ finally admitted there is a problem," concluded Don Kneeburg.

In the summer, CCPC members submitted comments on WPF's application for more land on which to apply the hog effluent. Those comments result-

ed in several conditions being placed on the permit.

CCPC members met with Governor Freudenthal, his councils, Peggy Trent and John Masterson, and new DEQ director John Corra. On the local level, the group met with the new city/county planner.

As a result of pressure from CCPC, Platte County Commissioners now advertise openings on county boards and commissions, giving everyone an opportunity to apply.

Members also worked with cattle feeders in the area in an effort to find a compromise on odor problems associated with feedlots in the area. This issue was postponed while DEQ works to define odor standards for all industry in the state, but our efforts will contribute to the final outcome.

The year closed with a lagoon tour of the Wyoming Premium Farm sites around Wheatland.

"It was definitely a busy year," said CCPC chair Cathy Wilson, "but we didn't realize how much we had accomplished until we did this review."

**Vickie Goodwin
PRBRC Staff**