

Powder River Breaks

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State, CBM Companies and Swartz Reach Settlement on Damages

"I hope my lawsuit and efforts to expose the damage and neglect of the state and the CBM companies in failing to deal with the downstream problems of discharging CBM water will keep others from having to go through what I've gone through." - Ed Swartz.

Third generation Powder River Basin rancher Ed Swartz was not willing to stand by while a nascent industry, the coalbed methane industry, threatened to destroy his ranch, water and livelihood. Thirty years ago Swartz was a pioneer in the battle to ensure protections for water, land and air, as a result of strip mining. Swartz and other citizens succeeded in passing the Surface Mining Control and Reclamation Act, which required mineral developers to undergo extensive permitting, and included bonding, surface owner consent, and water protection and replacement provisions. In the late 90's with the onset of the coalbed methane boom in the Powder River Basin, Swartz found himself at the center of a new, largely experimental and unregulated industry threatening to destroy the water, land, air and livelihood of the people living on the land.

Since 1999, Swartz has been observing, documenting, talking and writing about the damages high sodium CBM discharge water was having on Wildcat creek drainage. Like so many drainages in the Powder River Basin, Wildcat Creek was a grassy ephemeral creek that only flowed in summer flash

flood events or spring snow melt. But when the CBM boom began taking off in the late 90's, Swartz and others complained about the damage to the vegetation, streambeds and soils from the CBM water. In 2001 Swartz wrote: "This creek and meadows have been irrigated in every flood since about 1901 and there has never been a loss of vegetation or as much salt and alkali deposited as we got with just seven months of what the agencies say is drinkable coalbed methane water. Imagine: Seven months of water ruined what almost 100 years of natural water did not harm."

According to Swartz, Wildcat creek was filling up in the winter and spring with high sodium CBM discharge water, which killed the belly deep grass that used to be in the creek bottom. For the following years Wildcat Creek was devoid of all or most species of palatable vegetation, and salt deposits from the water were obvious on the stream banks.



Ed Swartz surveys damage to his creek bottom.

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DM&E Railroad Denied License To Construct In Powder River Basin

In a unanimous decision that marks a major set back for DM&E Railroad's expansion plans, the 8th U.S. Circuit Court of Appeals recently overturned the Surface Transportation Board's decision to grant a "license to construct" in the Powder River Basin. The court ruled that the STB could not simply ignore the effect of burning this additional coal, stating that the release into the atmosphere of pollutants is a "reasonably foreseeable effect" of the STB action, and that it would be irresponsible for the STB to approve a project of this size without first examining the effects that may occur as a result of increased coal consumption. The effects of increased coal consumption in the Midwest and the East must be thoroughly considered, the court concluded.

The court also ruled that the STB erred by issuing a license before complying with the National Historic Preservation Act. The STB must have a plan in

place to deal with historic properties, or it must have a programmatic agreement with consulting parties before it can issue a license.

Finally, the court ruled that the STB failed to consider the effects of increased noise from train horns and the cumulative effect of noise and vibration on households near the track.

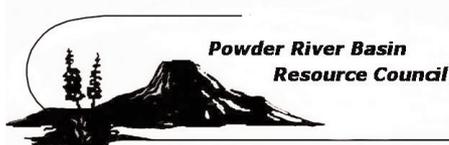
We did not get all that we asked for, but we certainly took a step in the right direction. DM&E no longer has a license to construct into the Powder River Basin. We may have a chance to build this decision into something stronger and better.

**Donley Darnell, PRBRC Member
From Beneath the Eagle's Wing**

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Message from the Chair....

Develop a relationship with your delegations at the state and national level as well as the heads of bureaucracies. Call them. Write letters to them. Thank them when they work for the best interest of Wyoming's people. Educate them when they do not. I can assure you the corporate lobbyists are doing just that on behalf of their wealthy clients.

Support the PRBRC and other organizations in Wyoming that believe in sustainable agriculture and responsible development of Wyoming's Resources. There is strength in numbers. When one of our senators or representatives receives one letter from an individual it may not carry much weight. If that individual or group is known by that representative or senator, it carries more weight. If many people write to our senators and representatives on a given subject it will finally sink in that these letter writers represent votes.

While nothing can take away the fact that Ed Swartz stood alone against powerful and wealthy forces, I believe that he would agree that the work done by PRBRC may have helped to create the political environment that allowed such an equitable settlement. And when certain entities sought to publicly discredit Mr. Swartz, our organization was able to corroborate his position through the media and by standing firm beside him.

**Nancy Sorenson
PRBRC Chair**

I just received the news of Ed Swartz's settlement of his lawsuit against the DEQ and CBM developers on Wildcat Creek in Campbell County. His courage and stamina to stay the course during this long and often, frustrating experience cannot be overstated. Mr. Swartz's victory belongs to him alone, but the outcome may benefit all citizens who have a stake in maintaining water rights and property rights in Wyoming. Thanks Ed.

While not all of us are in a position to take a stand of this magnitude, there are things that all of us can do when an injustice has been done to us or our neighbors:

Speak out. When someone or something has been harmed don't remain silent. Citizens everywhere are under assault by multinational corporations whose special interest is the bottom line and who, at this time, wield unprecedented power at the state and national level. In order to counter this immense power it is important that we keep the dialogue balanced, at the local, state and national level. This can be done by writing to our delegations, speaking to the media, and most of all speaking with our friends and neighbors.

Educate yourself. Sometimes it is hard to think of speaking to someone about a problem if you don't know enough about it. The PRBRC Website, the R-Calf Website, websites about alternative clean energy and many other sources of information are available from your computer or your library. In addition, our helpful and dedicated staff is constantly gleaning information from thousands of sources which can help us to stay current on rapidly changing conditions.

Coalbed Methane Development In Alaska



Phill Hoy

them up to date on what had been happening with CBM development in the Powder River Basin. At a breakfast meeting the day after my arrival (after hearing some of my experiences in our area), they decided that I should speak at every possible opportunity during my stay.

I was already scheduled to speak at two special area meetings. These meetings were attended by representatives of the local CBM development company, who gave a presentation on how they were proceeding with development in the area. The meetings were also attended by government officials who gave a presenta-

The first week of October I was contacted by several concerned citizens of Palmer, Alaska, who wished someone familiar with CBM development to speak to the area people. Coalbed methane development was beginning in their area. At their request, I traveled to Alaska the 2nd week of October to bring

tion on the regulations governing CBM development.

It was news to me that Alaska has one of the largest coal reserves in the nation. It seems **ALL** of the same problems happening in the Powder River Basin are set to create problems in Alaska too. Most of the minerals in the state are controlled by the government, meaning the issue of split estates exists there also. Water discharge, wells, pipelines, roads, and compressor station locations, most likely, will become problems too. The problems seem to be compounded by the fact that where the development will occur there are many small plots of privately owned land with houses on them. In Wyoming the development is mostly on large ranch acreages.

The CBM industry touted all the good things they would do, and the government representative presented all the requirements that must be met for development. All good things were going to happen, according to them, and the people, their rights, and their land would be protected. CBM development was going to be wonderful for all involved!!!

Until, I started to speak about what was happening in Wyoming... I gave a slide presentation showing CBM development, and I outlined many of the problems

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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.

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- Laramie County Resource Council
Mae Kirkbride, Chair
- Newcastle Action Group
Lynnda Schroder, Chair
- SE Wyoming Concerned Citizens
Rotating Chair
- Sheridan Area Resource Council
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Staff

- Director-Kevin Lind
- Office Administrator-Stephanie Avey
- Organizers-Jill Morrison, Gillian Malone, 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 Iverson 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

Citizen Participation Works!

Citizen Input At RMEC Meeting

Result's In Adaptation of Council's

Powder River members Bernie Barlow and Nancy Sorenson and staff, Pennie Vance, participated in a public meeting called by the Rocky Mountain Energy Council (RMEC) in Denver on August 26. The RMEC was formed by the President's White House Task Force on Energy Project Streamlining. The proposed intent of the RMEC is stated in the Federal Register as, "to be a State and Federal partnership that will allow a more effective management strategy for environmentally responsible renewable and nonrenewable energy production as well as cooperative development of energy policies on Federal and State public lands in the Rocky Mountain Region."

PRBRC members met a number of times with the White House Task Force prior to formation of the RMEC. Our concerns continue to focus on the potential for diminished enforcement of laws and regulations protecting Wyoming citizens from irresponsible practices of the extractive industries. Also of great concern was that the RMEC held their first meeting without allowing public participation.

Hundreds of individuals attended the August RMEC meeting in Denver, with over seventy signing up to speak out on a variety of social, economic, and environmental concerns. including Nancy and Pennie. Nancy participated in a press conference held prior to the meeting, and was able to contribute poignant comments about how development is affecting citizens and the environment in Wyoming, and her concerns that streamlining may only exaggerate the impacts if private citizens, especially those most directly affected, are not a part of the

process. Nancy's comments during the meeting expanded on these concerns.

The afternoon was devoted to discussion by the RMEC to finalize their purpose statement and the make-up of the council. Throughout that discussion, it was obvious that the barrage of consistent comments that they had heard during the morning did impact their thoughts and decisions. Council members repeatedly referred to the public's comments, especially the often stated need for public input and the public's desire to see more focus on resource conservation. (This was reflected in their decision to alter their purpose statement to include "conservation" along with existing clauses on the need to be "environmentally sensitive" in their work and recommendations.)

PRBRC's request for a seat at the table of RMEC will not likely come to pass, because the council is comprised only of government agency personnel and elected officials from the various states. If PRBRC is to have a voice at all, it will have to be primarily through Wyoming's elected representatives (of which none were in attendance in Denver), and by participating in the public comment opportunities. A third option for public participation, as outlined in the council's charter, is for an individual to petition to be on one of the RMEC's committees, to be formed as the council proceeds with its work.

Pennie Vance
PRBRC Staff

WOGCC Inspector Memo Ties Artesian Well Failures To Larger Methane Safety Issue



Roland and Beverly Landrey

Beverly and Roland Landrey know all too well what it is like to measure their day in gallons of water needed for bathing, flushing the toilet and cleaning or doing dishes. For over a year they have been without water since their artesian well stopped flowing last September. Until nearby coalbed methane development began, the well had produced 50 gallons a minute for 34 years. Several other ranchers in the Powder River Basin have lost artesian wells, and in many cases industry has drilled new wells. But so far the CBM industry (specifically Marathon and Lance, who are the nearest CBM operators) have refused to take

responsibility for the Landrey well or to deal with the problem. Furthermore, the state of Wyoming has failed to make them do so. A recently discovered two-page e-mail memo laid out the reasons.

PRBRC found the memo in the State Engineer files while researching water well problems. The memo is from a respected ("I usually call 'em like I see 'em) inspector for the Wyoming Oil and Gas Commission, Richard Cool, to his boss WOGCC Supervisor, Don Likwartz. The memo highlights the fact that the CBM development is the cause of the Landrey's well failure, and highlights industry's unwillingness to accept responsibility for the problem. It also focuses on what he sees as a bigger problem:

I went on to tell Tom that the wells going dry is just the crust of the biscuit in my opinion. I explained the learning curve that I have gone through with the Kretchman, Dube, Boardman and Pee Gee

flowing wells. Not only do the old flowing wells that are still making water drop off for awhile, they also tend to come back to life when the development gets nearer. Also, we can't forget about the wells that have silted in and not flowed water for years, coming back to life. That is what happened with the Boardman well. I would have thought that industry would have learned from those boondoggles. The cost of plugging the wells increases incredibly once they start blowing gas and water. They also present an unacceptable safety hazard. If I had CBM leases on the Powder, I would be plugging as many of the old 2-inch cased flowing wells as I possibly could, while they are relatively safe and cheap to put the cement to.

I explained that the way I understood it, the industry didn't want to set a precedent, but if they don't realize the potential problems with these old flowing wells and do something, the results could be disastrous..... Tom understands the attorney situation, and knows that the companies don't want to replace the well, because it is admitting liability. Well, the only thing that has changed on the Powder that could possibly impact these gas life wells is CBM. It may be time to recognize the fact that the development is going to eventually result in all the little blue dots on the top maps along the Powder to either quit making water, or start making a lot more water, and turn into potential sources for first, explosions, injuries and possibly worse. Waiting for an accident to justify the expense of preventive measures just doesn't seem very prudent to me.

Beverly Landrey and her family have written to Senator Enzi, spoken with Senator Thomas, and had numerous conversations with state officials and the Governor's office, yet no one is willing to make Marathon or Lance accountable—to ante up and do what is right by replacing the Landrey well. Senator John Schiffer has searched for ways to get the well replaced. After Beverly Landrey received the latest letter from the state, signed by Don Likwartz which said, "We just don't know what the cause of your well failure is," Likwartz called Beverly to

PRBRC Allies with Stockgrowers and Farmers Union in Support of COOL

The Powder River Basin Resource Council joined 135 other organizations representing farmers, ranchers and consumers asking Congress to maintain full funding for the implementation of country-of-origin labeling (COOL). Included on this list were the Wyoming Stockgrowers and Rocky Mountain Farmers Union.

This coalition, representing more than 50 million Americans, sent the letter to Senate members requesting their support of the Daschle-Enzi-Johnson amendment to the Senate Agricultural Appropriations Bill.

Powder River has long supported Country of Origin Labeling as a vital means of protecting consumer food safety and helping Wyoming's livestock producers to effectively market their products. Powder River is pleased that other organizations, including Wyoming Stockgrowers and similar organizations in other states are finally climbing aboard with their support as well.

National Farmer's Union President, Dave Frederickson, lauded the effort saying, "Agriculture producers and consumers remain united and steadfast in the call to keep mandatory country-of-origin labeling. COOL provides an opportunity for the United States to expand the level of consumer choice, confidence and knowledge in the retail marketplace, which consumers deserve and demand and American producers can provide."

Although the National Farm Bureau Federation and Farm Bureaus from a number of states and counties also signed onto the letter, neither Wyoming's state Farm Bureau nor any of Wyoming's county Farm Bureau federations did so.

The House of Representatives' Agriculture Appropriations Bill contains language to prohibit the U.S. Department of Agriculture from spending funds to implement mandatory country-of-origin meat labeling. Sens. Tom Daschle, D-S.D., Michael Enzi, R-Wyo., and Tim Johnson, D-S.D., are prepared to offer a "sense of the Senate" amendment instructing agriculture appropriations conferees to remove this language from the final agriculture spending bill.

Powder River's Agriculture Committee will continue its grassroots campaign to further increase public awareness of the importance of COOL to food safety and Wyoming's ranching community. This will include encouraging all livestock producers and concerned consumers to help Wyoming's Congressional delegation in the current battle to protect COOL, through phone calls and sending emails and letters.

Pennie Vance
PRBRC Staff

Ag Representatives Join Regional Fly-In to D.C.

Recently, Robert and I had the privilege of traveling with Skip and Vanna Waters and citizens from our surrounding states for a livestock issues fly-in sponsored by WORC. Our first goal was to educate congressmen and women, especially those from livestock producing states and those on the ag committees about the so-called Packer Ban Bill, introduced in the senate by Charles Grassley of Iowa, Tim Johnson and Tom Daschle of South Dakota and Mike Enzi of Wyoming, which seeks to ban outright ownership of cattle and hogs by large meat packer corporations for more than seven days, and the Captive Supply Reform Act, introduced in the senate by Mike Enzi and Tom Daschle. At the present time 80% of cattle and 40% of hogs are processed by only four huge packing companies. By owning cattle outright or contracting without a negotiated price, these packers are able to force prices on the open market down, effectively reducing the ability of livestock producers to get a fair price.

Our other goal was to reinforce our support of the Country of Origin Labeling Law which has already passed but was denied funding for implementation by the House of Representatives. Since this appropriations bill was coming to committee very soon, it was important that we educate congressmen on that committee about the benefits of the bill.

While doing this, we were struck by the hoards of highly paid profes-

sional corporate lobbyists that descend upon Washington and our delegations on a daily basis. Dressed in their immaculate business attire, backed by almost unlimited funding by organizations such as the American Meat Institute, and the National Cattlemen's Beef Association (your check off dollars), they have been putting tremendous pressure on lawmakers not to allow COOL to be implemented, and to keep the Packer Ban Bill and the Captive Supply Reform Act stalled as long as possible.

It occurred to us then how easy it must be, with the "disconnect" of miles and lifestyle, for our congressmen to forget who their constituents are and how important it is for each and every citizen to stay in contact with them. The one thing that keeps our government from being a dictatorship is that these people cannot remain in Washington without our vote. After all the meetings we attended over three days, we came away from our capital with the knowledge of how important these personal visits are. In our country it is still possible for each of us to make a difference and affect positive outcomes.

Nancy Sorenson
PRBRC Chair

Monitoring by DEQ Nets Odor Violations

Last spring, the Wyoming Environmental Quality Council directed the Air Quality Division of the Department of Environmental Quality to increase the monitoring of hog facilities in Wheatland and Albin. A plan presented to the Council by AQD Director Dan Olson at the meeting last June provided for DEQ staff to monitor the Wheatland and Albin areas twice a month and to spend one night a month in each community.

On August 21, 2003, a Notice of Violation was issued to Wyoming Premium Farms for odors that exceeded the 7:1 dilution standard on July 31, 2003. This is the second Air Quality NOV issued to Wyoming Premium Farms Finisher #1 site. The first was issued in April, 2001. As of now there has been no resolution of the first NOV.

Wyoming Premium Farms also has a Notice of Violation from the Water Quality Division of DEQ for three of the four hog facilities, including Finisher #1. That NOV is also pending.

On September 3, 2003, CHAMP LLC in Albin was issued a Notice of

Violation for odors exceeding the 7:1 dilution on July 14 and 15, 2003 at the Ponderosa Nursery 1 and Site II. This is CHAMP LLC's first odor violation, so the company was required to submit a plan and schedule to the Air Quality Division for reducing odors from the facilities. The plan is to be submitted within 45 days of the NOV.

Members of the Concerned Citizens of Platte County were pleased that some action has finally been taken. "We are glad DEQ has finally had the opportunity to smell the smell we've been smelling for over five years," Said Cathy Wilson, CCPC Chairperson. "However, there is a great deal of frustration that there has been no resolution of the previous violations. While Wyoming Premium Farms negotiates with the Wyoming Attorney General's office, citizens are left in the dark. We don't understand what takes so long."

Vickie Goodwin
PRBRC Staff

occurring here. I know many of the people in attendance couldn't believe what they were seeing and hearing. With the documentation and slide presentation I presented, they could SEE what was going to happen to them. It seems in Alaska as in Wyoming there is still no real law to protect the people, contrary to what industry and government officials had said. A local attorney who had researched the laws governing oil & gas development in Alaska confirmed what I had been saying. It seems we no longer have a government of the people, by the people and for the people but a government of the industry, by the industry and for the government to collect taxes.

At the end of the presentations there was a question and answer period. Our presentations had aroused much unrest and many questions. When the scheduled meeting time had ended, people wanted to continue; many questions and concerns were unanswered to their satisfaction. So many issues were discussed at these meetings it is impossible to tell all, without writing a book about what happened. It would seem to me that the residents of Alaska are just beginning their battle. I wish them luck!

While there I was also interviewed on television, radio and by several newspapers. I spoke at area organizational meetings, town meetings, borough meetings, and I said a few words at a counsel meeting. There was extreme

interest by all in what I had to say. A representative from a Wyoming CBM company (why he was there I don't know) approached me after one of the special meetings. He said that I wasn't telling these people the truth about what is happening with CBM development in Wyoming. He indicated to me that my companies would not work for a CBM company again because of this. My businesses support, as do I, responsible coalbed methane development. Without people like me and others willing to speak out in Wyoming, where would the CBM industry be? Did my pictures lie? I don't think so. Did my documentation of what has happened to me lie? I don't think so. If these things are not happening then why are property and legal actions due to CBM development problems being settled in favor of landowners? Why are attorneys and legislators so busy with this issue? Why are so many citizen action groups working to promote responsible development? Why are government agencies finally starting to listen and take action? The people do have a voice! The Powder River Basin Resource Council is truly an organization of the people, by the people and for the people. Their goal is to see that industry develops our natural resources responsibly. If you're not a member, you should join US.

I wish to publicly give a special thanks to the people who sponsored my trip to Alaska and gave me this opportunity to speak. They were a wonderful group to be associated with. My Thanks to ALL of Them.

**Phil Hoy
PRBRC Member**

Phil Hoy has received all kinds of praise from Alaskans for taking the time and effort to make the long journey to help educate them about CBM development. He received a standing ovation at both the community meetings and has raised the level of citizen involvement in that area to protect their property to a new level. Since his visit, Alaska regulators recently travelled to the Powder River Basin to meet with other landowners and regulators and see and hear more about CBM development. Last week those Alaska regulators announced a moratorium on issuing an new leases until "guidelines" were developed to address CBM development in the Matanuska - Susitna Valley.

Powder River Basin Resource Council



Encouraging Responsible Development Today...
For Tomorrow...

John Masterson
Office of the Governor
Wyoming State Capital
Cheyenne, WY 82002

Dear John,

Powder River Basin Resource Council members, Board, and staff would like to thank you for meeting with us last September 20. We appreciate your willingness to address our questions and the candidness of your replies. I apologize for not getting this to you earlier. Following are some of the questions raised by our members. The basic question precedes all others:

What is the Governor's Vision for Wyoming?

In order for the Governor to be an effective leader, we believe he must communicate, collaborate, and cooperate with the citizens of Wyoming. He must be able to share his vision and develop a robust plan that will ensure a successful, healthy outcome for the entire State. Resource Council members will gladly participate in the forming of this vision.

1. Energy development in Wyoming focusing on Coalbed Methane.

- What is the Administration's position on Landowner Rights legislation? Will the Governor support landowner involvement in the development beyond the token it is now given?
- What can be done administratively to address CBM impacts? Will the Governor support or present a package of rules and regulations pertaining to noise, dust, etc. that impact citizens not directly involved in CBM development?
- Will the governor support effective conservation of Wyoming groundwater resources?
- Will the Administration support more realistic bonding concerning the development and reclamation of CBM areas?
- The Section 29 Tax Credit in the current energy bill includes a credit for Coalbed methane production. Will the Governor speak out against this flagrant giveaway to industry? (Information on this credit was sent to you by Kevin Lind)
- Abandoned Mine Lands law is up for renewal. Will and in what manner will the Governor support it?
- The 10-acre exemption for mining continues to be an unregulated and highly abused section of Wyoming's mining law. Will the Governor be taking any steps to get this rogue industry under control?

2. Agricultural Issues that affect Wyoming

- The Governor has given his "unequivocal support for Country of Origin Labeling" (COOL). Can we quote you or the Governor on this? It would be great if the Ag department would speak out in support of COOL.
- Wyoming currently has a COOL law in place (Food and Safety Act), which was cited by the General Accounting Office as an example of State COOL legislation. Does the Governor and the Department of Ag intend to properly enforce the State law?
- Senator Enzi has introduced S.1044 on control of Captive Supply by meat packers. Senator Thomas has signed on as a co-sponsor of the bill. We believe the Governor supports this bill, but would like to hear it from him.
- Senator Enzi has also signed on to bill S. 27 concerning a Prohibition of Packer Ownership of Cattle more than 14 days before slaughter. Where does the Governor stand on this bill? Both Bills S.1044 and S.27 are fundamental in order to allow continued private small family ranching in the state of Wyoming.
- Is the Governor pursuing an investigation or any further action regarding the North Platte Basin's loss of water to Nebraska in the Modified Nebraska-Wyoming Water Decree?

Thank you for addressing these questions. We would like to invite you to attend our Annual Meeting on November 15, 2003 at the Historic Sheridan Inn in Sheridan. The meeting will begin at 12:30 for lunch and will include a speaker from R-Calf on the monopoly issues, a panel discussing surface owner rights concerning split estates, and a message from Teddy Roosevelt IV on conservation and ranching.

Hope to see you there.

Sincerely,

Shane Cross
Vice - Chairman
Powder River Basin Resource Council

Planning Conference 2003



Right to left: Clay & Gayla Rowley, Mae Kirkbride, Corra Innes, Ralph Avey, Jay Butler and John Masterson

The annual planning meeting was held for the second year at the Powder Horn Ranch south of Douglas on September 20. Participants who arrived the evening before were serenaded most of the night and the early morning by bugling bull elk. The crisp autumn sunshine and clear air provided a lovely incentive to address the many issue campaigns of Powder River. In the morning, issues committees considered the goals set last year against the accomplishments that had been made in the last 12 months. Plans and goals were set for the rest of 2003 and 2004.

John Masterson, Counsel to the Governor, joined the members for lunch and presented the stance of the administration on several issues. He also fielded many questions from the members and seemed to enjoy the enthusiasm and commitment that were evident in members' comments. As a result of our discussion with Mr. Masterson the letter beside this article was sent.

The afternoon started with a presentation by Kevin Dowling, of WORC, on the concept of Branding, a process which standardizes our public image for both internal and external communities. The formal meeting ended with a presentation by Ed Werner of CANDO on the FutureGen project, which is a proposal supported by the federal government for the development of "clean coal" technologies, including power plants.

A chili supper closed out the day with several members from the local area joining the participants. The fifth Board Meeting of the year was held the next day at the Ranch with excellent attendance. While their spouses were at the Board Meeting, Dennis Borgialli and Nancy Darnell hiked into the back country and watched an up-close magnificent battle by two bull elk over a harem of cows. A wonderful finish to a productive Planning Meeting for 2003.

PRBRC Staff

Trees along the channel also began dying both on Swartz's ranch and upstream on the neighbors.

Swartz wrote letter after letter to the state, and had inspectors out to view and document the damages and discharges, but the state, dizzy with the desire to collect dollars from the industry, avoided enforcement and problem-solving actions, turning a blind eye and deaf ear to the problems. In 2001, Swartz vowed, "This problem will not go away and be forgotten by me. I have too much to lose. I will expect action from all parties involved, and it's way past time."

Swartz hired Cheyenne attorney, Kate Fox, with Davis and Cannon, and filed a bold lawsuit against the state of Wyoming and Redstone Resources in Federal District Court. Both the state and industry attempted to have the suit dismissed, but Judge Brimmer denied their efforts. While Swartz and his attorney were building their case against the state and Redstone, the state continued to issue discharge permits and renewals on Wildcat Creek drainage. Fox and Swartz were forced to file an objection to the issuance or renewal of any more discharge permits on the Wildcat Creek drainage.

Before long, Swartz found himself up against not just Redstone Resources, but five other CBM companies, and over a dozen "expert" witnesses hired by industry in a legal case before the Environmental Quality Council. But they hadn't reckoned on Swartz's powerhouse attorney and his own expert witnesses, not to mention the force of Ed Swartz, himself, who was facing the loss of his ranch and way of life. Initial hearings were held in July that proved tense for all parties, with the state admitting they had made mistakes. Before the second round of testimony the EQC had scheduled to begin in September, Swartz, the state and the CBM companies reached a settlement.

WOGCC Inspector Memo cont... from page 3

say they were trying to get industry to pay into a fund to replace the well, with assistance from the Conservation District office. Although this seems a round-about way to make industry responsible for its actions, it fits completely with their habit of not accepting any responsibility or liability.

Bev Landrey's daughter, who has also gone to bat for her parents on the well situation, questions the state's position. "How can we expect industry to treat Wyoming and our citizens with respect if we don't expect the same of them as we do of other industries or anyone else in society? These problems are not going to go away but will get worse."

Dustin Bleizeffer, a reporter for The Casper Star Tribune recently wrote an in-depth article about the Landrey well problems, memo and the failure of industry or the state to address the problems. In response to the article, a fiery letter to the editor appeared from an oil and gas worker applauding the reporter for the article and stating:

Common sense screams that the CBM industry's effect on underground water is real - the pictures on the front page Sunday prove it. If these industry weenies are so afraid of liability that they won't do the right

The settlement with the state involves the payment of \$40,000 to Swartz for damages, and includes extensive water and soil monitoring in addition to specific water quality requirements during irrigation season. Further, the settlement requires coordination between CBM companies for their discharges, and "a broader approach" by DEQ to discharges within a particular watershed. An additional settlement Swartz made with industry is not public. Both Swartz and his lawyer realize the true test is yet to come in how the actual discharges work out to protect Swartz and his ranch land.

Every single issue regarding land, water and air protection has been brought to the state by its citizens fighting to protect their fundamental rights, resources and way of life. If it had not been for Ed Swartz and many other citizens forcing the state and industry to stop ignoring the problems and start addressing them, none of these issues would ever be resolved. "The state of Wyoming was Hell bent on pushing the development at the cost of many other citizens on the ground," Swartz said. "This industry has been far from responsible, and our government has too often allowed the industry to get away with negligent practices. The CBM companies have lawsuits from mineral owners for failing to pay the full amount of royalties, they've been fined by the federal government for improperly reporting the gas prices, and they've been sued by me and others for damages. They have a long way to go to improve their reputation and they better get busy. Actions speak louder than words."

**Jill Morrison
PRBRC Staff**

thing right now, then I call on Gov Freudenthal to dig the Landrey's well right now! Then toughen the regulations and face the industry to value its hosts' land, water, family and animals.

Michael Stephens of Pinedale wrote the letter and we quote him, not because we know him but because we could not say it any better.

Meanwhile back on the Powder River, Bev Landrey writes, "My husband will soon be 84 years old and I am nearly 71, and we have been hauling water in gallon jugs from the neighbor's for our house use, and the neighbor hauls water to put in a tank for our horses. We travel 40 miles to Buffalo to do our laundry. The value of our little ranch has dropped to practically nothing with no water supply."

Editors Note: This past summer Roland suffered a stroke, and Bev has been busy taking care of Roland and dealing with living with no water.

**Jill Morrison
PRBRC Staff**

Renewable Energy Committee News

CANDO (Converse Area New Development Organization) should be commended for sponsoring a renewable energy conference in Douglas August 21-22nd. Powder River members Bernie and Michele Barlow and Larry Barbula attended, along with staff members Vickie Goodwin and Gillian Malone. The first day of the conference consisted of overviews of renewable energy activities already taking place in Wyoming, including existing technologies and available funding and implementation programs, such as the Wyoming Business Council's renewables grant program through the Department of Energy, and USDA's grant and loan program for agricultural applications of renewables. Outside in the convention center parking lot sat the evidence of what is becoming almost commonplace in Wyoming-solar powered livestock tanks-at least two models on display. One of the exhibitors told me there were at least 10 or 12 traditional well drillers now offering the solar option.

Day two of the conference featured practical applications of renewable energy concepts and technologies, beginning with a presentation of net metering. What quickly became evident was that attitudes toward net metering vary considerably depending on whether one is an independent producer, a potential "competitor" (as in a power company), or a regulator of the power.

The net metering presentation was followed by two "nuts and bolts" break-out sessions, one on wind energy, which I attended, and one on solar. Presenters in the wind energy session included Dan Leach of LTH Energy, whose company is in the process of developing a 400 megawatt wind farm in southern Wyoming, and Andy Rose, an independent producer who has been working to get a grid-connected wind turbine operational near Hart Mountain for "well over a year." Rose encountered multiple obstacles along the way, from the special use permit he was required to secure from the county, to the interconnection agreement he was negotiating with the local power provider, Garland Power and Light, which he claimed was in conflict with Wyoming's net metering law. In spite of the time and headaches he has invested in this project, Rose urged people to be proactive on these issues in their communities and at the state level, reminding all of us that renewable energy development is still in its infancy in Wyoming, and that we all have a lot to learn.

**Gillian Malone
PRBRC Staff**

WSEI Proposes Mediation

On October 6, the Wyoming Split Estate Initiative (WYSEI) held an informational meeting in Buffalo to explain the services it has to offer for resolution of conflicts between mineral companies and surface landowners as they negotiate surface use agreements. Partners represented at the meeting were Dru Bower, Wyoming Petroleum Association, Rod Smith, Wyoming Stock Growers Association, and Suzy Noecker, Wyoming Farm Bureau Federation. The Initiative was created to help resolve the problems of split estate (when a coalbed methane operator or mineral owner has control of the mineral estate or mineral rights associated with a parcel of land and a surface landowner controls the surface of the same parcel.) WYSEI representatives noted that lack of trust and communication between the surface landowner and the mineral operator often make negotiating a surface use agreement a difficult and adversarial process. They have developed a protocol they claim will provide impartial assistance to both parties. While the meeting focused on the benefits to surface owners, it was clear from the attendance that mineral producers hope to profit from expediting the development process, including using the mediation process to secure a surface use agreement within 60 days.

Stock Growers representative Rod Smith started out, saying that the best way for a CBM operator to infuriate a surface landowner is to have a surveyor show up on the property and begin surveying without informing the landowner. Another cause for conflict is when the landowner sits down with a representative of a CBM firm that has not been given the power to consummate an agreement. The landowner might as well send a "hired hand" to negotiate on his/her behalf, he said. "Let's not forget that the only guy at the table that's not getting paid is the landowner."

WYSEI lists some "best practices" that can be followed to avoid these difficulties and suggests things that both landowners and producers can do to facilitate the process in the beginning. The Initiative offers several different levels of assistance, including "advisory teams," (which might be experts in soil science or engineering) to resolve questions about erosion or road construction.

WYSEI can also provide the assistance of trained mediators. As mentioned above, the mediation process is designed to be completed within 60 days of the first meeting, with costs shared equally by the landowner and the producer. Dru Bower emphasized, however, that utilization of these mediators (or any assistance from WYSEI) is totally voluntary.

WYSEI is using an already established mediation program through the Wyoming Department of Agriculture. Lucy Hansen, Mediation Coordinator for the Wyoming Agriculture and Natural Resource Mediation Program (NRMP) was present to explain how the mediation process works. Selected mediators have

already received training, which is ongoing and will continue to be ongoing, Hansen said. Meetings were held recently in Sheridan and Rock Springs to train and "test out" mediation team members.

Also involved in the Split Estate Initiative is the USDA Natural Resources Conservation Service (NRCS), which can provide technical services and expertise in watersheds, wildlife protection, wetland issues, and other environmental quality issues.

If the mediation process fails to produce a satisfactory agreement, WYSEI can facilitate either binding or non-binding arbitration of the dispute. During arbitration, attorneys typically perform according to protocol in a structured environment. Evidence is presented, and the arbitrator acts more or less like a judge. WYSEI representatives feel that engaging in arbitration can keep the conflict out of court.

Gillian Malone (representing PRBRC) suggested that the mediation process might be more successful if both parties were negotiating from equal positions. Although WYSEI had made it clear at the beginning that they would not as a group be a party to proposing and supporting legislation, she wondered where individual partners stood on the issue. Here are their positions:

Rod Smith of the Stock Growers said his group would support legislation that addresses equity. He further said the WSGA will look at proposed split estate agreement legislation very closely. The group doesn't want to see floors or ceilings on monetary compensation and doesn't want law to dictate compensation in general. Freedom involving private property rights is a significant concern.

The Wyoming Farm Bureau's policy is to work on legislation and review it, according to Suzy Noecker. But, the WFBF does not want something to be lost in an effort to gain something else. There is danger in putting prices on things and there is danger of the landowner losing an ability to negotiate.

The Petroleum Association will look at proposed legislation, and will look at the proposals objectively, Dru Bower promised.

Numerous handouts were made available to meeting attendees. A flowchart developed by WYSEI for progressing through the alternative stages of providing advisory teams, to mediation, and leading up to arbitration, was presented to the group and is available on the website (www.wysei.com) or from the Wyoming Agriculture & Natural Resource Mediation Program, 2219 Carey Avenue, Cheyenne, WY 82002-0100

Clay and Gayla Rowley
Landowners/PRBRC Members

Membership Challenge

Christmas is just around the corner. Wouldn't you like to give that someone special a new Carhartt Ranch Coat for those cold days ahead? Or take that special someone out to dinner for two during the busy holiday season! So here is your chance to **Win A Carhartt Ranch Coat** or that **Dinner for two**.

What to Do:

- Talk with your friends, neighbors and family and ask them to join PRBRC.
- Give a **Powder River Basin Resource Council gift membership** for Christmas.

What You Will Get:

- The Powder River member that brings in the most members **by noon, November 14th** will not only be the winner of the **Carhartt ranch coat** but will be our guest on November 15, 2003 for lunch with guest speaker Bill Bullard! (You will be presented with the Carhartt Coat at that time.)
- Second place is Dinner for two at a fine dining establishment in your home town. (We will announce the winner on November 15th, and notify you by mail.)

BETTER HURRY, You only have a little over two weeks to be a WINNER!

PRBRC MEMBERS: Have Your Voice Heard At Powder River's Annual Business Meeting

- **Place:** Historic Sheridan Inn
- **Time:** 10:00 am (registration begins at 9:00am)
- **Date:** November 15, 2003

Public Events:

- Lunch Featuring BILL BULLARD of R-CALF 12:00 - 2:00 P.M.
- Legislative Panel 2:15 - 4:00 P.M.
- Silent Auction Noon until 6:45 P.M.
- No-host bar and strolling musicians 5:00 o'clock...
- Dinner Featuring TEDDY ROOSEVELT IV Starting at 7:00 P.M.

Prices:

All day(meals included)/one person: \$30
All day(meals included)/two people: \$55
Lunch with speaker and panel: \$12
Speaker and panel only: \$5
Dinner and keynote speaker: \$25/person

For Reservations please contact:
Powder River Basin Resource Council at 307-672-5809

Theodore Roosevelt IV Biography



Theodore Roosevelt IV

Theodore Roosevelt IV is a Managing Director at Lehman Brothers and a member of the Firm's senior client coverage group which oversees the firm's client and customer relationships. He joined Lehman in 1972 as a general banker in domestic corporate finance. In 1977, following Lehman Brothers' merger with Kuhn Loeb, he was assigned to the International Department and also worked in the Firm's Government Advisory Group. He joined the Short and Medium Term Corporate Finance Department in 1982, and was appointed manager of the department in 1985. He was named a Managing Director in 1984, and, in January 1991, he was

asked to focus on the development of the Firm's international business. He was elected Chairman of the Board of Directors of Lehman Brothers Financial Products Inc. in 1994, and Chairman of the Board of Directors of Lehman Brothers Derivative Products Inc. in 1998.

Upon graduating from Harvard in 1965 with an AB, Mr. Roosevelt joined the Navy as an officer in Underwater Demolition Team Eleven. Following his

active duty, he joined the Department of State as a Foreign Service Officer. He initially served in Washington, D.C. and was subsequently assigned to Ouagadougou, Upper Volta, West Africa (now Burkina Faso). In 1970, Mr. Roosevelt took a special leave of absence from the Department of State to attend Harvard Business School, where he received his MBA. Upon graduation in 1972, he was offered a White House Fellow, which he declined in order to join Lehman Brothers.

Mr. Roosevelt is an active conservationist and is a board member (former Chairman) of the League of Conservation Voters, on the Governing Council of The Wilderness Society, a Director of The Institute for Environment and Natural Resources at the University of Wyoming, a Trustee of the Pew Center for Global Climate Change and a Trustee of the American Museum of Natural History. Mr. Roosevelt is a member of the Council on Foreign Relations, The Economic Club of New York, and a Governor of the Foreign Policy Association. He was appointed by Governor Pataki to the New York State, Recreation and Historic Preservation Commission for the City of New York and the Hudson River Park Trust. At the Republican Convention in 2000, he gave the speech on the environment. Mr. Roosevelt is also a frequent lecturer on history and economics at New York University. He and his wife, Constance, live in Brooklyn Heights.

Excerpts from a Teddy Roosevelt IV Speech to the Izaak Walton League Cody Wyoming, 2002

Beneath the noise of the rancorous national debate over resource management and beneath the radar of many of our politicians and journalists, you are forging local collaborative solutions to resource conflicts with the assistance of institutions like IENR [Institute for Environment and Natural Resources.] In the best examples, collaborative solutions leave behind a healed landscape, as well as a healed community: the stakeholders are transformed from outraged victims of outside forces to the subjects of their own destiny. The question is: can consensus building and collaboration survive what's coming down the pike? Can consensus building and collaboration even offer the proper solutions to what's coming down the pike?

In the wake of September 11, we have all seen how quickly the ante can be raised on resource management and how quickly the disposition toward command and control will reassert itself – *even* among western Republicans.

Here in the west, the common good is also required to expand, much like the horizon, to encompass the national agenda of the hour. Finding the common good anymore is a little like the search for subatomic particles: we can only approximate its location. But I would like to pursue those two split directions - the smallest common denominator and the national agenda.

First, the national agenda. Will legitimate national interests and the global limits of resources like oil and water trump local or regional concerns? Despite my party's assertion that public lands management would be more responsive to local concerns –it looks as though energy mandates will dominate the landscape, whether or not you like it. The consequences of that are nowhere so amply illustrated as in Wyoming's Powder River Basin.

Much as Wyoming's [former] Governor has urged State agencies to speak with a unified voice on energy development, the White House wants federal agencies to do the same. The White House is even urging farmers and environmentalists to "work with industry" as exploration and drilling is stepped up in the Rockies. Of course, Powder River Basin seems to pose the question: Will industry, in the absence of government safeguards and vigilance, work in good faith with local ranchers, farmers, and environmentalists? in short, with the local communities from whom they will profit. Powder River Basin, in my opinion, has the potential for becoming the next poster child for national environmental NGO'S [non-governmental organizations] as they fight the Administration's energy plans for this region.

And, now, I will turn to another difficulty with locating the common good and that lies in its splintering into the smallest possible denominator. With collaborative stratagems, this problem resides in one little word "and." Bill Ruckelshaus, a good friend of mine, discussed the merits of that word, "and," in a talk he gave here several years ago. He described consensus building, or the facilitation process, as going from "or" to "and." As he put it, "we stop saying fish or irrigation" and start saying "fish *and* irrigation." This *is* a sound strategy for

finding common ground and ending often unnecessarily strident polarization, as long as the ecosystem can still sustain our 3-letter word, "and."

The west, perhaps rightfully, regards its extra, external, level of stakeholders as adversarial interlopers. Since "national stakeholders" are generally represented by Washington-based environmental NGO'S or national politicians, that view of the rest of us is certainly understandable. I also think it's a mistake.

I think that the west, in its pursuit of sovereignty, is failing to tap a huge reservoir of good will out there – community to community – good will that, in fact, could be ironically of assistance in securing more local standing in the west on public lands issues. It's true that on certain public lands, such as our national parks and wildlife refuges, the majority of Americans want to see national values preserved; the majority do not want snowmobiles in Yellowstone or drilling in ANWR. The mistreatment of those keystone national places and the rhetoric of western representatives anger them.

But I believe that, if keystone places were honored as they should be, the American people – across a wide spectrum – would be more inclined to support the west's desire for more local standing in the management of a broad swath of BLM and National Forest land. Most Americans want to see rural communities survive and thrive, and they fully, at a gut level, understand the desire for real participation in the decisions that affect one's home. The challenge is to develop community to community relationships apart from the distorting rhetoric of national interest groups on both sides of the spectrum.

I believe that we need a critical mass of local collaborative endeavors in order to withstand what will be the escalating temptation toward even more draconian command and control solutions in a world of resource scarcity. I believe that these endeavors also give us our best hope of developing a land ethic along the lines of what Aldo Leopold proposed. In order to do that, however, we must be certain that our use of the word "and" is always directed toward the good of the commonwealth, rather than just the appeasement of special interests.

A flourishing ecosystem is essentially a vast network of relationships among inter-linked and inter-dependent entities. Our existence depends on healthy ecosystems and, to be part of one, we too must engage in a wide array of relationships. A former head of the Forest Service, Jack Ward Thomas, once said that "ecosystems are not only more complicated than we think, they are more complicated than we *can* think."

And, yet, this is exactly the task before us: to think like an ecosystem, to understand our enmeshment --that oil cannot be separated from water; that local can no longer be separated from global.