

**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**

_____)	
In re:)	
)	
Eagle Oil and Gas Co.)	
Phoenix Production Co.)	NPDES Permit Appeal Nos. 15-02, 15-03,
Wesco Operating, Inc.)	15-04 and 15-05
)	
NPDES Permit Numbers:)	
WY-0020338, WY-0024945,)	
WY-0024953, WY-0025232,)	
WY-0025607)	
_____)	

**NORTHERN ARAPAHO TRIBE'S
MOTION TO INTERVENE**

COMES NOW, the Northern Arapaho Tribe ("NAT"), by and through counsel, and respectfully moves the Board for permission to intervene and participate as a party in these proceedings, based on the following:

1. NAT has a fifty percent (50%) undivided property interest in the surface estate at issue with the permits in dispute.
2. NAT has a fifty percent (50%) undivided property interest in the mineral estate at issue with the permits in dispute.
3. NAT commented on the permit at issue through the Wind River Environmental Quality Commission. See Exhibit A.
4. NAT has inherent sovereign authority over the subject matter of this dispute, and has promulgated tribal laws and rules that could be impacted by these proceedings.

5. NAT has leases or other contracts with the operators or permittees involved with the permits in dispute.

6. In light of these interests, it is important for NAT to have input in the way permit restrictions are fashioned, and to make sure that any permit restrictions align with tribal law and relevant contractual obligations.

7. If intervention is granted, NAT would want to participate in any ADR opportunities presented by the board, and approach ADR in a way that involved all stakeholders in the permitting issues to evaluate whether there is a way to accommodate competing interests while protecting the environment.

8. If intervention is granted and ADR is not successful, NAT would like to participate in briefing the issue on the merits.

9. There is ample precedent for allowing a Tribe like NAT to intervene and participate in these proceedings in the manner suggested here. *In re Four Corners Power Plant*, NPDES Appeal No. 01-06, at 1-2 (EAB Feb. 20, 2001) (granting motion to intervene and file a brief of a tribe whose authority to regulate water quality was at issue).

10. Counsel for NAT consulted with counsel for the EPA, which does not object to the proposed intervention. Counsel for NAT consulted with counsel for NRDC, which does not object to the proposed intervention. Counsel for NAT consulted with PEER, which does not object to the proposed intervention. Counsel for NAT consulted with counsel for Phoenix Production Co., which does not object to the proposed intervention. Counsel for NAT consulted with Wesco, which does not currently object to the proposed intervention, and will report to the board directly if an objection arises.

Based on the foregoing, NAT requests that this motion to intervene be granted.

Dated this 1st day of May, 2015.

Respectfully submitted,



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ATTORNEYS FOR INTERVENOR
NORTHERN ARAPAHO TRIBE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that true and correct copies of the Northern Arapaho Tribe's Motion to Intervene were served on the 1st day of May, 2015.

Via the EPA's E-Filing System to:

Clerk of the Board
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Environmental Appeals Board
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Memorandum

To: Ms. Colleen Rathbone, US EPA Region 8 NPDES Permits
From: Wind River Environmental Quality Commission (WREQC)
Date: May 30, 2013
Subject: WREQC Comments on the Proposed EPA NPDES Discharge Permits

Introduction

EPA is proposing significant revisions to the NPDES permits for produced water discharge at the following five oil and gas production facilities on the Reservation:

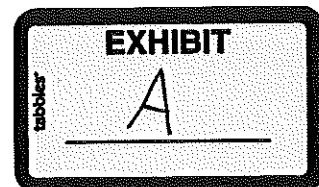
1. Wesco- Winkleman Dome
2. Wesco- Sheldon Dome N.W.
3. Phoenix- Sheldon Dome
4. Phoenix- Rolff Lake
5. Eagle- Sheldon Dome

WREQC appreciates the opportunity to review and comment on these draft permits prior to public notice to address some of the potential issues that may arise. As you know, WREQC is the Tribal agency tasked with the regulation and protection of human health and the environment on the Reservation. With this in mind, WREQC reviewed the proposed permits to determine if there were any conflicts with the Tribal Water Quality Standards (WQS), and for potential impacts, either positive or negative, on human health and the environment.

WREQC agrees that EPA should consider the Tribal WQS in developing these permits and that the discharge of produced water should not impact the existing and designated uses of the receiving water. WREQC cannot permit the discharge of produced water on the Reservation that may be harmful to wildlife, livestock, or the established aquatic communities. At the same time, WREQC does not support permit requirements that may go beyond the Tribal WQS, unless there is adequate justification.

Tribal WQS- Classification of Receiving Waters and Designated Uses

WREQC concurs with EPA's use of Tribal WQS during development of these permit renewals. However, WREQC wants to ensure that the WQS are interpreted and applied as intended by the Tribes. In the WQS, the Tribes have classified the receiving waters (Bighorn Draw and Dry Pasup Creek), as Class 3B.



According to the WQS, Class 3B waters are known to support or have the potential to support populations of indigenous aquatic life other than fish that the Tribes have determined deserve special water quality protection measures. Uses designated on Class 3B waters include aquatic life other than fish, primary contact recreation, wildlife, industry, agriculture, cultural/traditional and aesthetic uses. The intent of the Tribes in classifying these water body segments, which in the absence of effluent discharge would normally be dry, is to protect the desirable indigenous species, other than fish, which have become established in the water body.

Whole Effluent Toxicity (WET) Testing

EPA is proposing a new permit requirement for Whole Effluent Toxicity (WET) testing, as a means to demonstrate compliance with the Tribal WQS narrative statement on toxics. Based on the definition of Class 3B, WREQC believes that it may not be justified to require WET testing using two aquatic species, daphnia magna and pinephales promelas (one a fish species and neither indigenous), that are not protected under the 3B classification. As stated previously, the intent of the Tribes in classifying these water body segments is to protect those non-fish indigenous species which are now established in the presence of the effluent discharge. WET testing seems more appropriate for a facility that discharges directly into a Class II water body that is protected for fish.

Sulfide

EPA is proposing a new effluent limit for sulfide of 2.0 µg/L. This limit is based on the aquatic life value (chronic) in EPA's National Recommended Water Quality Criteria, and referenced in the Tribal WQS. While WREQC agrees that sulfide can be toxic to aquatic life and desires reducing sulfide to the extent practical, WREQC has documented that the receiving waters support a variety of adapted indigenous aquatic life. Sulfide is a naturally occurring contaminant commonly found in geothermal springs in other areas of the Reservation and surrounding region, it is not a pollutant added to the water by facility. WREQC has previously documented the rapid decrease in sulfide levels downstream of these facilities as the water cools and is oxygenated. The produced water is being discharged for the beneficial use of the established non-fish aquatic life, wildlife, and livestock. The proposed sulfide criteria may be more stringent than necessary to protect this use.

Marathon Oil Company recently demonstrated, through a study of produced water at Steamboat Butte Oil Field, that it needed to reduce the sulfide level below 1.8 mg/L in order to pass the WET test. EPA is now proposing a limit that is almost 1,000 times lower than what is needed to pass the WET Test, and which is not necessary to protect the indigenous aquatic life and beneficial use that now exists.

WREQC is concerned that the proposed sulfide limit may be difficult or impossible for the operators to achieve, given the levels now present in the effluent. The result could be reinjection of the water, possibly shut-in wells, or even shut down of entire oil fields.

This would result in the loss of this valuable water source for use by wildlife and livestock, and as well as the loss of the aquatic communities already established in the receiving waters. WREQC would like to discuss the proposed sulfide limit further with EPA.

Fluoride

The draft permits propose a discharge limit of 2.0 mg/L for fluoride. EPA based this limit on a University of Wyoming report on water quality for livestock and wildlife. However, our review of this UW report indicates that there were no studies available on safe fluoride levels for animals so the limit was instead based on the drinking water standard for human consumption. WREQC notes that the receiving waters are not protected for drinking water use and the fluoride limit may not be applicable to livestock and wildlife use and should be reviewed further.

Summary

WREQC fully supports minimizing the discharge of pollutants to the Reservation waters to the extent practical. However, WREQC is concerned that the proposed NPDES permit requirements go above and beyond the Tribal WQS and are more stringent than necessary to protect the designated uses of the receiving waters. Produced water is the only available perennial water source where these facilities are located. Implementation of these new permit requirements may result in the loss of this valuable water source and the associated riparian habitat which supports livestock, wildlife, and aquatic life use.