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Ms. Colleen Rathbone (8P-W-WW)
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

RE: Comments on Wind River Reservation Pollution Discharge Permits

Dear Ms. Rathbone:

I am submitting these comments on the following proposed permits and their statements of basis:

- Eagle Oil and Gas Company - Sheldon Dome Facility; NPDES Permit No. WY-0020338;
- Phoenix Production Company - Sheldon Dome Field; NPDES Permit No. WY-002495;
- Phoenix Production Company - Rolff Lake Unit; NPDES Permit No. WY-0024945;
- WESCO Operating, Inc. - Sheldon Dome Field; NPDES Permit. No. WY-0025607; and
- WESCO Operating, Inc. - Tensleep #1 (also known as Winkleman Dome); NPDES Permit No. WY-0025232

In summary, these proposed permits are drafted in a manner that is not compliant with U.S. Environmental Protection Agency (EPA) requirements; they are incomplete and do not address an array of effluents which will be discharged. In addition, the permits put wildlife and livestock which drink the produced water at risk. Finally, the monitoring requirements proposed in these permits are impermissibly lax.

For reasons detailed below, I urge that the proposed permits should be rejected.

I. Many Toxic Chemicals Not Listed in Permit.

A number of highly toxic chemicals, both fracking fluids and maintenance fluids, are not listed in these permits even though these chemicals will be discharged to the surface of Wind River Reservation.

II. Permits Lack Limits for Discharge of Toxic Chemicals

Not only do the permits fail to disclose the chemicals in maintenance fluids and fracking fluids, they also utterly fail to set limits for the discharge of toxic chemicals found in the fluids. The permits need to include fuller disclosures of fracking practices occurring at the facilities to better characterize discharge. The permits also need to be far more complete by including the quantities of chemicals in fracking fluids as well as discharge limits for the many toxic chemicals that are present in fracking fluids.

III. Effects on Wildlife and Livestock Undisclosed

The EPA has imposed a zero-discharge requirement for all produced waters in the onshore subcategory of the federal regulation, except for oil and gas wells located west of the 98th meridian, which is roughly the western half of the United States. This means that oil and gas wells can discharge produced water as long as the produced water is used in agriculture or wildlife propagation when discharged into navigable waters and the produced water discharges must not exceed an oil and grease daily maximum limitation of 35 mg/L.

The EPA defined the term "use in agricultural or wildlife propagation" by stating "the produced water is of good enough quality to be used for wildlife or livestock watering or other agricultural uses, and the produced water is actually put to such use during periods of discharge." While the permits have demonstrated that rancher's livestock depends on the water for drinking and other beneficial uses, the permits do not address whether the produced water is of good enough quality for use by livestock and wild animals.

IV. Permits Lack Adequate Monitoring Standards

The permits lack adequate monitoring standards. EPA requirements state that "limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality."

The permits did not even attempt to account for pollutants expected to be present in the discharge even though many fracking fluids contain similar combinations of chemicals. Also, the monitoring requirements in the permits are not strict enough to collect the necessary data on the other pollutants in the fracking discharge, both from fracking events and maintenance events, to determine other pollutants in the discharge.

V. Permits Do Not Meet EPA Standards

After examining all of the information that the permits lack it is clear that the permits do not meet minimum EPA standards. When permits are drafted the permit writers have a duty to include certain requirements and follow specific steps that were not completed with these permits. The NPDES Permit Writer's Manual dictates specific steps for characterizing the effluent and receiving water:

1. Identify pollutants of concern in the effluent
2. Determine whether water quality standards provide for consideration of a dilution allowance or mixing zone
3. Select an approach to model effluent and receiving water interactions
4. Identify effluent and receiving water critical conditions
5. Establish an appropriate dilution allowance or mixing zone.

The permits have not identified the pollutants of concern since most do not list the maintenance or fracking chemicals used. Because the first step was not completed, the remaining steps only

reflect the information that was provided, which led to the creation of sub-standard discharge limits – resulting in a regulatory "garbage-in-garbage-out" effect.

VI. EPA Permits Less Stringent than Wyoming Standards

These glaring weaknesses of the EPA permits stand in contrast to the fracking laws of Wyoming because the state has some of the most comprehensive fracking laws in the country. In some important respects, Wyoming appears to have more stringent requirements than the EPA.

First and foremost, Wyoming requires operators to provide a full list of chemicals they propose to use in fracturing. The state also requires operators to disclose the chemical abstract service numbers for all additives used along with the concentrations of those additives. Both of these requirements would make the Wind River Permits stronger.

VII. Conclusion and Recommendations

In their current state, the Wind River permits should be rejected because they are incomplete, un-protective, and fail to meet important EPA permit standards. The permits do not serve their intended purpose of protecting water quality and human and animal health.

A number of changes are needed to make these permits minimally passable:

1. The permits should require the disclosure of all chemical programs occurring at the facility, including well maintenance, acid stimulation, and fracking. These disclosures should include the products and chemicals used during the stated events, how the chemicals are managed, and how they will affect the character and nature of the discharge.

2. The permits should mandate the testing of chemicals not listed in WQS but are listed in MSDS that could cause animal and human health risks. The permits need to be reflective of the dangerous chemicals used in fracking.

3. The permits need to strengthen the monitoring requirements. The permits should require that monitoring samples be collected after bi-monthly well maintenance and fracking events. Monitoring requirements should be tied to chemical events happening at the facility and not whenever the facility wants to sample.

Unless these Wind River permits can become more encompassing and achieve their intended goals as NPDES permits, they should be rejected. The EPA has been charged with protecting both water quality and public health, but has ignored that charge with these permits.

Respectfully submitted,

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