

# Judge overturns Mont. water rules for gas drilling

MATTHEW BROWN - Associated Press writer | Posted: Thursday, October 15, 2009 12:00 am |

BILLINGS, Mont. -- A federal judge has overturned water quality rules that were meant to protect southeastern Montana cropland from natural gas drilling but were assailed by Wyoming as a threat to energy production.

The rules covered the Tongue and Powder rivers, which flow north from the rich gas fields of northeastern Wyoming into primarily agricultural land in Montana.

Drafted by Montana and approved by the Environmental Protection Agency, the rules limited how much salty water -- a byproduct of drilling -- could enter the rivers. State officials said the EPA had not yet begun to enforce the rules, in part because of a pending lawsuit.

In a judgment in that case issued Tuesday, U.S. District Judge Clarence Brimmer in Cheyenne annulled the rules and sent them back to the EPA to reconsider. Brimmer wrote that the EPA had failed to give the water quality standards a full review when it approved them in 2003 and 2008.

The lawsuit has pitted natural gas companies backed by the state of Wyoming against the EPA and Montana.

The case represents one of several running skirmishes between Montana and Wyoming over the rivers that flow north across their shared border.

The states also have grappled over how much water each is entitled to in the Yellowstone River basin, and whether priority should be given to recreational, industrial or agricultural interests.

Combined, the quarrels reflect a simmering animosity between the states over who controls the spigot in an arid part of the country where water ranks as a precious commodity.

Montana Gov. Brian Schweitzer predicted that despite Brimmer's ruling, the EPA would eventually come down again in Montana's favor and restore his state's water quality rules.

"This is some legal maneuvering, but the EPA has been an advocate for Montana's position from the get-go," Schweitzer said.

Gas companies had argued the restrictions put a crimp on drilling in an area straddling the Montana-Wyoming line known as the Powder River Basin.

A type of gas known as coal-bed methane is common in that area, where companies have drilled almost 30,000 wells over the last decade -- primarily in Wyoming. The gas is typically found in underground seams saturated with water, meaning millions of gallons of water must be pumped out to free the trapped gas.

Despite a recent drilling slowdown after the recession dampened gas prices, thousands more wells already have been approved in both states.

Schweitzer said water produced by the gas industry inside his state would still be held to the old rules. Water coming in from Wyoming will not, at least until the EPA acts on the issue.

A spokesman for the EPA's regional office in Denver, Rich Mylott, said the agency was reviewing Brimmer's order.

Some of the nation's largest gas companies -- including Marathon Oil, Anadarko Petroleum and Devon Energy -- first challenged the EPA in April, 2006, over its approval of Montana's water quality rules.

"We're pleased with the Wyoming federal court's ruling and look forward to a review of the complete administrative record by the EPA," Marathon spokesman John Porretto said Wednesday.

Wyoming's director of Environmental Quality, John Corra, said few changes had been seen in his state's permitting process for drilling since Montana's rules went into effect.

But he added that "there are principals at stake going forward" as the states maneuver for control over the region's water.

"There's no question that we need to pay attention to downstream water standards. The question is, are those standards set appropriately and fairly," Corra said. "We felt that in fact they were pretty restrictive."