

# Methane water lawsuit could have big impacts

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Ranchers and energy producers have been butting heads over what to do with excess water from coal-bed methane operations for more than two decades in the Powder River Basin — and as a recent lawsuit over the water shows, the fight is far from over.

But this time, in a case that may be concluded within the next several weeks, ranchers who depend on naturally irrigated bottomlands for some of their grazing might have scored a victory, even as energy producers notch a few of their own.

For the first time, the Wyoming Department of Environmental Quality is prepared to require some protection for at least some naturally irrigated lands, such as creek bottomlands that remain damp or wet without human intervention. Previously, only artificially irrigated lands were covered by DEQ regulations.

“Naturally irrigated bottomlands are often the most productive lands on the ranch and are absolutely critical to a ranch’s survival,” said Wyoming Outdoor Council Attorney Steve Jones, who has been fighting the DEQ and three energy producers involved in the case for more than two years. “But the only lands the DEQ protects are artificially irrigated lands. That leaves a lot of Wyoming ranchers with no where to go if their bottomlands are impacted.”

The DEQ’s discharge permit manager Bill DiRienzo acknowledged Jones’ claim that the DEQ will probably incorporate some type of protection for naturally irrigated lands in all of its future discharge permits, pending a 90-day public comment period.

## Unsettled issues

Several other water discharge issues that the Wyoming Outdoor Council wants changed remain unsettled, however. It is these issues and many more details that the Wyoming Environmental Quality Council will need to decide at a final hearing on the case on June 24 in Sundance.

- The new regulations about naturally irrigated lands don’t acknowledge bottomland areas less than 20 acres in size.
- The regulations allow too many salts and other potential contaminants to be present in the discharge water, according to Jones.
- Reservoirs are not required to be lined and can be right in the middle of drainages. If they break, or the water leaches into the groundwater, serious damage could result, Jones said.

## DEQ disagrees

But DiRienzo said that the DEQ believes the new general permit process will work better for both the environment and the energy industry.

## Here’s why:

- Administering the permit has been streamlined and all operators are on the same schedule.
- The standard DEQ uses to permit reservoirs is adequate.
- The water quality standards do protect the environment.
- Each watershed is assessed under the new general discharge permits, rather than giving producers permits on a case-by-case basis and that this allows the DEQ to address cumulative impacts to the watershed.

Calls to Marathon Oil Co. and Yates Petroleum were not returned.

## What’s happened so far

It all started in 2006 when the Wyoming Outdoor Council filed a lawsuit against the Department of Environmental Quality’s then-new “general discharge permit” process.

The environmental group claimed, among other things, that the department did not protect or even acknowledge the existence of naturally irrigated lands.

A short time later, three energy companies, including two with offices in Gillette — Yates Petroleum and Marathon Oil — got into the fray and sued the DEQ, claiming the new permitting process was too stringent and arduous and that the current case-by-case permit process was adequate.

The case wound its way through the courts for almost two years, before it went to the Environmental Quality Council for what was supposed to be a final decision in late April.

But on April 25, the last day of the week-long hearing in Cheyenne, the council decided to sit on the issue for another two months. Two council members had already recused themselves due to connections with the energy industry and another was absent. It left the council with a quorum — but also potentially a tie vote.

This means that final decision on the naturally irrigated lands issue and several other water quality and water storage issues will be decided during a one-day hearing in late June.

The outcome of the tussle over the general permits issue will have far-ranging effects, as the permit in question is just the first of at least 22 planned watershed-based permits in the Powder River Basin area that the DEQ hopes to process as soon as the lawsuit is resolved.

The Wyoming Environmental Quality Council is a seven-member citizen's group that is appointed by the governor. The council has the final say on many environmental disputes that arise under the state's Environmental Quality Act and/or some of those that not resolved by the courts.