

0036



Department of Environmental Quality



To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.

Dave Freudenthal, Governor

John Corra, Director

2006

Coal General ak

February 22, 2006

Ms. Pam Grubaugh-Littig
Division of Oil, Gas and Mining
Suite 1210
Salt Lake City, Utah 84114-5801

Refer to Expandable 02 22 2006
file in General, 2006.
for additional information

Dear Pam,

Enclosed please find a copy of Wyoming's State of Material Damage and a copy of one of our recent CHIAs. I enjoyed the discussion with you and your hydrologists on CHIA issues and hope we can continue our exchange of information.

Please feel free to call me at (307) 777-7132 or email me at kmogle@state.wy.us if you have any questions regarding the enclosed materials. I am looking forward to receiving your materials.

Sincerely,

Kathy Muller Ogle

Kathy Muller Ogle
CHIA and Database Program Principal

cc: Rick Chancellor

Enclosed: Statement of Material Damage
CHIA -14 Middle Powder River Basin

RECEIVED

MAR 02 2006

DIV. OF OIL, GAS & MINING

Herschler Building • 122 West 25th Street • Cheyenne, Wyoming 82002 • <http://deg.state.wy.us>

ADMIN/OUTREACH
(307) 777-7758
FAX 777-3610

ABANDONED MINES
(307) 777-6145
FAX 777-6462

AIR QUALITY
(307) 777-7391
FAX 777-5616

INDUSTRIAL SITING
(307) 777-7368
FAX 777-6937

LAND QUALITY
(307) 777-7756
FAX 777-5864

SOLID & HAZ. WASTE
(307) 777-7752
FAX 777-5973

WATER QUALITY
(307) 777-7781
FAX 777-5973



STATEMENT OF MATERIAL DAMAGE

1. The Department of Environmental Quality has undertaken a cooperative effort to update the process of conducting Cumulative Hydrological Impact Assessments (CHIA's) for coal mining regions within Wyoming. After the CHIA for a particular mine and surrounding area is completed, the State Regulatory Agency must make a determination whether the hydrology of the area will suffer **material damage** as a result of mining activities as described at W.S. 35-11-406(n)(iii) for areas outside the permit and as described at W.S. 35-11-406(n)(v)(B) for alluvial valley floors.
2. Before beginning an extensive effort to develop an updated CHIA process, a detailed examination of what is meant by material damage was conducted. Our conclusion was that the definition of Material Damage as given in Chapter I.2(bd) of the LQD Regulations is full and complete. This definition is reprinted below as Figure 1:

"Material damage to the hydrologic balance" means a significant long-term or permanent adverse change to the hydrologic regime.

Figure 1: DEQ/LQD Regulations Chapter I.2(bd), January 11, 1996

3. The OSM released a draft paper titled "OSM Hydrology Oversight Guideline Document" in mid 1993. The section heading and instructions excerpted from that document are reproduced below as Figures 2 & 3. These statements provide insight to the OSM position on how to define material damage.

3.0 THE CUMULATIVE HYDROLOGIC IMPACT ASSESSMENT
3.3 Material Damage and Environmental Considerations
THE RA SHOULD ESTABLISH CRITERIA FOR "DEFINING" OR
DETERMINING MATERIAL DAMAGE

In order to determine whether a proposed operation has been designed to prevent off-site material damage, the RA must establish a working definition of "material damage" that is consistent with existing laws, standards, regulations, and water-resource concerns

Figure 2: Excerpt from the OSM draft oversight document

Under Section 3 of this document, the following statement is made:

Material-damage criteria for both ground-water and surface-water quality should be related to existing standards, where possible.

Figure 3: Excerpt from OSM draft oversight document

4. Unlike most states, Wyoming has laws and regulations that address all aspects of surface and groundwater, quantity and quality, within the permit area as well as offsite. With the regulations and statutes in place, what is needed is to clarify what is meant by the phrase "Significant Longterm or Permanent Adverse Changes". We believe:

"Significant Longterm or Permanent Adverse Changes" are those changes to the surface or groundwater hydrology that are inalterable conditions contrary to the Wyoming State Constitution or of statutes administered by the State Engineer or water quality standards administered by the Water Quality Division.

5. Applicable sections of the Wyoming State Constitution and specific State and Federal statutes and regulations have been identified that support this clarification. These cites are listed here.

A. Wyoming State Constitution:

- 1) Article 1
- 2) Article 2

B. Statutes administered by the State Engineer control water quantities:

- 1) WS 41-3-101
- 2) WS 41-3-102
- 3) WS 41-2-111
- 4) WS 41-3-504
- 5) WS 41-3-604
- 6) WS 41-3-901

C. Statutes administered by the State Engineer control water quantities (continued)

- 7) WS 41-3-916
- 8) WS 41-3-919
- 9) WS 41-3-933

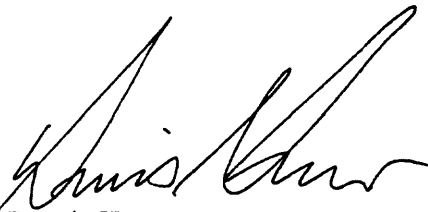
- D. Interstate Compacts incorporated into Wyoming State Statutes: Various Interstate Compacts relating to the allocation of surface water flows from Wyoming have been incorporated into Wyoming Statutes. These compacts are identified by the river they are associated with and are as follows:
- 1) Colorado River Compact: WS-41-12-301
 - 2) Upper Colorado River Basin Compact : WS-41-12-401
 - 3) Bear River Compact: WS-41-12-101
 - 4) Snake River Compact: WS-41-12-501
 - 5) Yellowstone River Compact: WS-41-12-601
 - 6) Belle Fourche River Compact: WS-41-12-201
 - 7) Niobrara River Compact: WS-41-12-701
- E. U.S. Supreme Court Decrees regulating use of water in or tributary to the North Platte River: On October 8, 1945 the U.S. Supreme Court issued a decree enjoining the States of Colorado and Wyoming from diverting or permitting the diversion of water from the North Platte River beyond narrowly defined limits. Legal actions and resulting court decrees affecting the North Platte River basin continue to the present. There is a separate decree for the Laramie River as a tributary to the North Platte.
- F. Statutes and rules and regulations administered by the Water Quality Division address surface and groundwater qualities:
- 1) WS 35-11-103
 - 2) WS 35-11-301
 - 3) Chapter I "Quality Standards for Wyoming Surface Waters" addresses the regulation of surface waters of the state.
 - 4) Chapter VIII "Quality Standards for Wyoming Groundwaters" addresses the regulation of groundwaters of the state.
 - 5) Chapter VI "Salinity Standards for the Colorado River Basin."

G. U.S. Public Law 95-87, Surface Mining and Reclamation Act & Regulations:

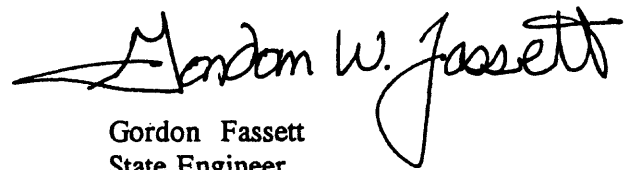
- 1) Section 510(a)
- 2) Section 510(b)(3)
- 3) 30CFR §780.21

6. Existing federal regulations and the state regulations address mitigation of less than long-term or permanent adverse changes to the hydrologic regime.

- A. 30CFR §780 (e) & (h)
- B. WS 35-11-415(b)(xii)



Dennis Hemmer
Department of Environmental Quality



Gordon Fassett
State Engineer