

CBM water fight explores gov's authority

By *DUSTIN BLEIZEFFER*

Star-Tribune energy reporter Wednesday, May 23, 2007

When Gov. Dave Freudenthal refused in April to ratify the Environmental Quality Council's rule regarding coal-bed methane water surface discharges, it wasn't a denial that a problem existed and needed to be addressed.

Instead, Freudenthal reiterated his view that petitioners for the rule went barking up the wrong tree. Matters of water quantity reside with the state engineer's office, he said, not with the Department of Environmental Quality.

On Tuesday, the lead petitioner, the Powder River Basin Resource Council, filed for a court review of those authorities. The group insists that DEQ is required to regulate water quantity when it directly impacts water quality.

"The governor's conclusion that the rules reach beyond the statutory authority of the Environmental Quality Act is arbitrary, capricious, an abuse of discretion, not in accordance with the law and unsupported by substantial evidence," the conservation group said in its filing for review of the decision in state District Court in Cheyenne.

Freudenthal's press secretary, Cara Eastwood, said the governor could not comment on Tuesday's court filing because no one in his office had had an opportunity to read it.

Kate Fox, Davis & Cannon attorney representing the Powder River Basin Resource Council, said the matter may very well go to the state Supreme Court.

"We hope to get a decision from the Supreme Court as expeditiously as possible," Fox said.

The group said its request for legal review of Freudenthal's action against the rule was a "natural and necessary response." Large volumes of groundwater are pumped from coal aquifers to relieve the hydrostatic pressure that holds methane in the coal. Although some water is used to water livestock and wildlife, most of it is flushed over an arid terrain that often isn't amenable to the year-round, unnatural flows which pick up salts from the soils and sometimes cause erosion.

Although Freudenthal asserts that authority to regulate water volumes lies with the state engineer, he has not directed the state engineer to consider implementing that authority over the coal-bed methane industry.

"The quantity of coal-bed methane water affects quality," Arvada rancher Bill West said in a prepared statement. "The council realized that DEQ's assumption that all the coal-bed methane water is being beneficially used by livestock and wildlife is not a legitimate way to issue permits. In fact, very little of the coal-bed methane water is put to use."

The Wyoming State Geological Survey estimates 44.1 billion barrels of water -- enough to fill Lake DeSmet 30 times -- is associated with the state's total estimated coal-bed methane gas reserve.

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