

Water drives legal issues in CBM debate

By *DUSTIN BLEIZEFFER*

Star-Tribune energy reporter

The state and the Powder River Basin Resource Council exchanged a legal volley this week over coal-bed methane water issues.

The landowners group contends that the coal-bed methane gas industry can afford to better manage production water to co-exist with existing arid ranching in the region. State and industry officials claim that limiting the discharge of production water would imperil the industry.

On Tuesday, Attorney General Pat Crank filed a motion to dismiss the PRBRC's suit in First U.S. District Court in Cheyenne seeking to overturn Gov. Dave Freudenthal's decision not to approve new rules by the Environmental Quality Council.

The council's controversial rulemaking would have forced the Wyoming Department of Environmental Quality to consider appropriate volumes of coal-bed methane water discharged on the surface. In April, Freudenthal refused to ratify the rulemaking, arguing that only the state engineer has authority to place limits on water volumes.

The Powder River group filed suit, arguing that Freudenthal's decision was without substance, and that the rulemaking would stand the test of court review.

On Thursday, the PRBRC filed a request asking District Court Judge Edward Grant to send the case to the Wyoming Supreme Court, on the grounds that any decision by the district court would likely be appealed. In addition, the case brings up questions about the separations of power at the state level.

In fact, Crank's own motion to dismiss references separation of power.

"The Governor is not an 'agency' when acting in his role as the 'Governor' responsible for review and final approval of rules as provided by Wyo. Stat. 16-3-103," Crank's motion read. The motion continues that state statute, "provides no jurisdiction to consider Petitioner's 'Petition for Judicial Review of Administrative Action.'"

Crank argued that the court doesn't have authority to order the governor to sign the Environmental Quality Council's rulemaking.

Crank was unavailable for comment this week.

The PRBRC maintains that Freudenthal essentially killed a rulemaking that would enforce existing Wyoming law, 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 PRBRC stated in its original filing for review.

In a parallel legal action, two Campbell County families filed suit on Friday against the Wyoming Board of Control and the Wyoming State Engineer for allegedly failing to impose water quantity limits on coal-bed methane water discharges.

Freudenthal declined to comment on either case this week.

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 for consumption by livestock and wildlife, most of it is flushed over an arid terrain that often isn't amenable to year-round, unnatural flows which pick up salts from the soils and sometimes cause erosion.

John Robitaille, vice president of the Petroleum Association of Wyoming, said he couldn't respond to any of the recent legal actions. However, he said the practice of pumping water from coal aquifers and dumping it on the surface is a matter geologic reality.

"As far as I know, with this type of reservoir, the need to lower the static head is what releases the gas," Robitaille said. "You have to remove the water and depressurize the zone."

Energy reporter Dustin Bleizeffer can be reached at (307) 577-6069 or dustin.bleizeffer@casperstartribune.net.