Congress of the United States
Washington, DC 20515

January 27, 2006

Board Secretary
Montana Board of Environmental Review
1520 E. 6th Avenue
Helena, Montana 59620-0901

Re: Proposed Amendment of ARM §§17.30.670 and 17.30.1202, and Adoption of Rules I through X on Coalbed Natural Gas Water Quality

Members of the Montana Board of Environmental Review:

Wyoming's Coal Bed Natural Gas (CBNG) industry is vital to the regional and national economy. In addition to increasing the domestic energy supply, the industry provides needed regional jobs and produces revenue for state, local and federal governments. Thus, as Wyoming's Congressional delegation, we believe it is essential to sustain responsible production of CBNG resources in the Powder River Basin. The petition, under the guise of environmental benefit, could severely limit CBNG production without any significant additional protection for water quality or existing water uses in Wyoming or Montana. We urge the Montana Board of Environmental Review (MBER) to reject the petition. The proposed rules lack scientific basis, pose a serious threat to energy supply, have questionable legal basis, and threaten ongoing cooperative efforts.

PROPOSED RULES HAVE NO TECHNICAL OR SCIENTIFIC BASIS

This petition proposes to amend Montana's recently adopted nondegradation rules. In 2003, this body determined that EC and SAR are "nonsignificant." The science and data has not changed since the Board last considered these issues. Yet, without any supporting science, the petition seeks to reverse MBER's previous determination. It appears that Wyoming CBNG exploration and development has been targeted.

The Board's primary rationale for this amendment is that "Montana's nondegradation policy is necessary to protect the existing water quality of the Tongue River from degradation from methane discharges in Montana and Wyoming," (MAR Notice. 17-231 at 1846). However, a 2005 draft report by the EPA and the State of Montana concludes that CBNG discharges in Wyoming have had no measurable effect on water quality in the Tongue River since CBNG activity began in 1999. Moreover, based on testimony given by John V. Corra, Director, Wyoming Department of Environmental Quality, it appears that the Montana standards for EC and SAR are below the ambient levels of the Montana watersheds at issue.

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If CBNG discharges do not adversely affect these watersheds, the Petition's intent to protect water quality cannot be realized by adoption and application of the rules. Rather, the net effect of the rules will be to reduce CBNG exploration and production.

PROPOSED RULES WOULD ADVERSELY AFFECT CBNG DEVELOPMENT AND U.S. ENERGY SUPPLY ULTIMATELY HURTING WYOMING RESIDENTS

While it is clear that the proposed rule would adversely affect CBNG development in Montana, if the rules were applied in Wyoming, production would also be diminished in Wyoming (we understand there are legal issues surrounding the application of the rules in Wyoming). If the rules were applied in Wyoming, evidence suggests that current and expected CBNG production in Wyoming would fall significantly.

Possible suspension of present and future CBNG development in Wyoming would have far-reaching, negative effects on the State, local governments and individual families throughout Wyoming. Wyoming residents in the Powder River Basin and in the rest of the State have benefited from responsible CBNG development. Revenue from this development has helped secure record funding of the State's schools and spurred economic success throughout the State. We are troubled by reports that Montana DEQ's economic analysis of the impacts of this proposed rule change did not take into account any potential effects in Wyoming. Those impacts will be significant.

This is not just a Wyoming or Montana issue – the entire country has a vested interest in CBNG. Industry models suggest that the consequence of lower production of CBNG in the Powder River Basin will raise average national natural gas prices. While some may argue that these kinds of economic losses and resulting precarious energy supply consequences are worthwhile to preserve the natural environment in the Powder River Basin, such arguments fail in this circumstance. These rules have no new measurable environmental benefit.

RULE IS CONSTITUTIONALLY SUSPECT

The rules' apparent extra-territorial targeting of the Wyoming CBNG industry may impermissibly regulate interstate commerce, a power reserved to Congress and denied to the individual states. By limiting CBNG exploration and production in Wyoming the proposal restricts interstate commerce. Clearly, CBNG production in Wyoming, present and future, substantially affects interstate commerce and forms a significant part of the nation's domestic energy supply. If application of this rule means that the State of Wyoming is precluded from permitting further activity, or from reissuing expiring permits for existing activity – Montana

has essentially regulated interstate commerce in CBNG. The ability to regulate interstate commerce in this manner is reserved to the Federal Government.

INTERSTATE COOPERATION IS THE BEST APPROACH

Montana and Wyoming have been working together to develop a sustainable CBNG industry while protecting the States' environments and natural resources. The complexity of the task before Wyoming and Montana in reaching this goal is obvious. We fear these proposed rules would dampen the cooperative discussions between Wyoming and Montana on CBNG development and believe that cooperation when based on sound science will ultimately produce the best results for both States.

For the foregoing reasons, we urge the MBER to reject the petition.

Craig Thomas
U.S. Senator Craig Thomas

Michael B. Enzi
U.S. Senator Michael B. Enzi

Barbara Cubin
U.S. Representative Barbara Cubin

Cc: Governor Dave Freudenthal