

NOV 16 2010

SETTLEMENT AGREEMENTJim Ruby, Executive Secretary
Environmental Quality Council

The Wyoming Department of Environmental Quality, Air Quality Division (DEQ/AQD), Herschler Building, 122 West 25th Street, Cheyenne, WY 82002, and Basin Electric Power Cooperative (Basin Electric), 1717 East Interstate Avenue, Bismarck, ND 58503-0564, enter into this Settlement Agreement to fully and finally resolve and dispose of all matters related to Basin Electric's Appeal and Petition for Review docketed before the Wyoming Environmental Quality Council (EQC) as Docket No. 10-2802 wherein Basin Electric challenged condition 16 of Best Available Retrofit Technology (BART) Permit MD-6047 for the three coal-fired boilers at the Laramie River Station (LRS).

WHEREAS WYO. STAT. ANN. § 16-3-107(n) and Chapter I, § 11 of the DEQ Rules of Practice and Procedure provide for the disposition of contested cases by stipulation of the Parties upon approval by the EQC and;

WHEREAS WYO. STAT. ANN. § 35-11-112 authorizes the EQC to order that a permit be modified and;

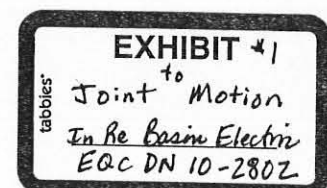
WHEREAS the DEQ/AQD has considered all relevant statutory and regulatory factors concerning BART, Reasonable Progress Goals and Long-term Strategy for Regional Haze and has determined that the emission reductions and other terms provided for in this Settlement Agreement meet all requirements applicable to the Laramie River Station under the Regional Haze Rule through December 31, 2018 and Wyoming statutes and regulations respecting Regional Haze and;

WHEREAS Basin Electric is prepared to reduce emissions at the Laramie River Station and meet the other terms of this Settlement Agreement to comply with the said determination of the DEQ/AQD concerning Regional Haze requirements and;

WHEREAS the DEQ/AQD provided public notice of its draft November 5, 2010 Wyoming State Implementation Plan for Regional Haze addressing requirements under 40 C.F.R. § 51.309(g) (SIP) seeking public comment and scheduling a public meeting on December 8, 2010, and said draft indicated that the provisions of BART Permit MD-6047 for LRS incorporated into the draft are subject to change since the Permit is under appeal and;

WHEREAS disposition of this matter will serve and further the purposes of the Wyoming Environmental Quality Act (WEQA) and related air quality statutes and regulations promulgated thereunder and make it unnecessary to adjudicate the particular issues involved in this appeal, Basin Electric and the DEQ/AQD, after having engaged in settlement negotiations to reach agreement concerning Regional Haze requirements applicable to the Laramie River Station and resolve this case, hereby stipulate and agree as follows:

1. Basin Electric submitted a BART application to the DEQ/AQD for the LRS in September, 2007. Subsequently, Basin Electric provided additional information to the DEQ/AQD relating to this application.



2. After public notice and comment, and public hearing, on December 31, 2009, the DEQ/AQD issued its decision, response to comments, and BART Permit MD-6047 for the LRS. That permit included condition 16, which addressed NOx emissions under the Long-term Strategy of the Wyoming Regional Haze SIP as well. Permit MD-6047 also set BART limits on NOx emissions.

3. On March 8, 2010, Basin Electric filed its Appeal and Petition for Review of BART Permit MD-6047 for the LRS with the EQC, docketed as Docket No. 10-2802. This Settlement Agreement resolves all issues raised in Docket No. 10-2802, including issues concerning Laramie River Station NOx limits under BART and under the Reasonable Progress/Long-term Strategy requirements of the Wyoming Regional Haze SIP through December 31, 2018.

4. Basin Electric and DEQ/AQD (the "Parties") agree this Settlement Agreement is a reasonable and evidence-based approach to meet the requirements of the Regional Haze Rule regarding Laramie River Station that enables them to resolve the pending BART Appeal.

5. This Settlement Agreement is subject to and conditioned upon the following:

- A. Approval by the EQC and issuance by the EQC of an order requiring the parties to comply with its terms and dismissing the Permit appeal; provided DEQ/AQD determines to modify Sections 6.5.8 and 8.3.3 of the draft SIP as provided in Paragraph 7.G and 8.D.
- B. In the event judicial review of an EQC order approving this settlement is sought by a third party, final resolution of such review by a judgment of a court upholding this Settlement Agreement, which judgment is not or cannot be further appealed.
- C. Final adoption by the DEQ and the State of Wyoming of a Regional Haze SIP that is consistent with Paragraphs 7.B, 7.C and 7.D of this Settlement Agreement, and submittal of the final SIP to EPA for its approval.
- D. Final approval by the EPA of the Wyoming Regional Haze SIP that is consistent with Paragraphs 7.B, 7.C and 7.D of this Settlement Agreement and the EQC order.

6. If, after the public comment period and public meeting regarding the draft Regional Haze SIP is concluded, and if after considering all comments, the DEQ/AQD determines that Paragraphs 7.B, 7.C and 7.D of this Settlement Agreement should not be incorporated into the Regional Haze SIP, then this Settlement Agreement shall be null and void.

7. In order to implement this Settlement Agreement, the Parties agree as follows:

- A. Basin Electric shall conditionally withdraw and dismiss all issues raised in its Appeal and Petition for Review docketed as Docket No. 10-2802, provided that such withdrawal and dismissal shall cease to be effective if:

any of the conditions in Paragraph 5 is not met. The EQC shall retain jurisdiction over the BART Appeal for the purpose of hearing such Appeal if the dismissal should cease to be effective.

- B. Request the EQC as part of this Settlement to order DEQ/AQD to delete condition 16 of BART Permit MD-6047.
- C. Request the EQC as part of this Settlement to order DEQ/AQD to amend condition 7 of BART Permit MD-6047 so that it reads as follows:

| Effective upon completion of the initial performance tests to verify the emission levels below, as required by Condition 8 of this permit, emissions from Laramie River Station Units 1 through 3 shall not exceed the levels below. The NOx limits shall apply during all operating periods. | | | |
|---|--------------------------|---|---|
| Pollutant | lb/MMBtu | lb/hr | tpy |
| NOx | 0.21 (30-day rolling) | Unit 1: 1,220 Unit 2: 1,220 Unit 3: 1,254 (all 30-day rolling) | Unit 1: 4,780 Unit 2: 4,780 Unit 3: 4,914 (all 12-month rolling) |

- D. Basin Electric agrees to further reduce NOx emissions from the LRS Units 1-3 boilers to a calendar-year limit of 12,773 tons per year (tpy) total for all three boilers by December 31, 2017, and continuing thereafter unless otherwise changed pursuant to new regulatory or permit requirements. Basin Electric understands that the DEQ/AQD will not require further NOx reductions from the LRS Units 1-3 boilers for purposes of meeting BART, Long-Term Strategy requirements and/or Reasonable Progress goals in the Wyoming Regional Haze SIP through December 31, 2018. As a result, Basin Electric also understands that after December 31, 2018, the DEQ/AQD may impose additional NOx emission requirements for the LRS related to regional haze, subject to Basin Electric's right to contest such requirements. Basin Electric further understands that prior to December 31, 2018, the LRS Units 1-3 boilers may be subject to additional NOx reductions pursuant to regulatory or permit requirements unrelated to BART or other regional haze requirements.
- E. In the event that Basin Electric determines it will need to install control technology to comply with the 12,773 tpy (calendar-year basis) NOx emission limit total for the LRS Units 1-3 boilers, Basin Electric agrees to include as part of the application required by Paragraph 7.F a demonstration that such control technology will be operated at designed performance levels.

- F. Basin Electric shall submit a permit application to the DEQ/AQD by December 31, 2015, requesting that the 12,773 tpy (calendar-year basis) NOx emission limit requirement of Settlement Agreement Paragraph 7.D be incorporated into a permit.
- G. DEQ/AQD, after receiving public comment on the November 5, 2010 Draft Wyoming State Implementation Plan for Regional Haze addressing requirements under 40 C.F.R. § 51.309(g), will determine whether to modify Section 6.5.8 and 8.3.3 thereof to reflect Paragraphs 7.B, 7.C and 7.D of this Settlement Agreement.

8. In reliance upon Basin Electric's representations and agreements in this Settlement Agreement and subject to the approval hereof by the EQC and issuance of an EQC order requiring the Parties to comply herewith, the DEQ/AQD agrees to the following:

- A. To delete condition 16 of BART Permit MD-6047.
- B. To modify condition 7 of BART Permit MD-6047 consistent with Paragraph 7.C of this Settlement Agreement.
- C. Allow Basin Electric flexibility to achieve the 12,773 tpy (calendar-year basis) NOx emission limit total for the LRS Units 1-3 Boilers in whatever lawful manner Basin Electric sees fit.
- D. To modify Section 6.5.8 and 8.3.3 of the November 5, 2010 Draft Wyoming State Implementation Plan for Regional Haze addressing requirements under 40 C.F.R. § 51.309(g) to reflect Paragraphs 7.B, 7.C and 7.D of this Settlement Agreement consistent with any EQC Order approving this Settlement Agreement if, after receipt of public comment on such draft SIP, DEQ/AQD concludes it is appropriate to do so and to implement this Settlement Agreement.

9. Upon execution of this Settlement Agreement, the Parties, shall jointly move the EQC for an order staying the Permit appeal, conditionally approving this Settlement Agreement pending the DEQ/AQD's decision pursuant to Paragraph 8.D, and modifying BART Permit MD-6047 in accordance with Paragraphs 7.B, 7.C and 7.D of this Settlement Agreement pending the DEQ/AQD's decision pursuant to Paragraph 8.D. If DEQ/AQD decides to modify Section 6.5.8 and 8.3.3 of the final Regional Haze SIP to reflect Paragraphs 7.B, 7.C and 7.D of this Settlement Agreement, after receipt of public comment on the November 5, 2010 Draft Wyoming State Implementation Plan for Regional Haze addressing requirements under 40 C.F.R. § 51.309(g), the Parties shall jointly move the EQC for an order dismissing EQC Docket No. 10-2802, subject to the conditions listed in Paragraph 5 and 7.

10. The Parties agree to be bound by this Settlement Agreement should the EQC enter an Order granting the Parties' joint motion, subject to the conditions listed in Paragraph 5 and 7. If the EQC denies the Parties' joint motion or takes action which is inconsistent with or in any

way alters the provisions of this Settlement Agreement, this Settlement Agreement shall be voidable at either Basin Electric's or DEQ/AQD's option.

11. This Settlement Agreement represents a good faith settlement of disputed factual allegations and legal arguments of both Basin Electric and the DEQ/AQD submitted to the EQC in the BART Appeal, and shall not constitute nor be construed as either admitting or denying the validity of any such allegations or arguments.

12. Neither the DEQ/AQD nor the State of Wyoming nor any of its Agencies shall be held as a party to any contracts or agreements entered into by Basin Electric to implement any condition of this Settlement Agreement.

13. Nothing in this Settlement Agreement relieves Basin Electric of its duty to comply with all applicable requirements under the WEQA, and rules, regulations, and standards adopted or permits issued thereunder. DEQ/AQD does not warrant or aver that Basin Electric's completion of any aspect of this Settlement Agreement will result in compliance with the WEQA and rules, regulations and standards adopted or permits issued thereunder.

14. If the EQC approves this Settlement Agreement, it shall be admissible by either Party without objection by the other Party in any subsequent action between these Parties to enforce the terms hereof or as otherwise required herein.

15. Neither Party shall have any claim against the other Party for attorney fees or other costs incurred with the issues resolved. Each Party shall bear its own attorney fees and costs, if any, incurred in connection with EQC Docket No. 10-2802 and this Settlement Agreement. Each Party assumes the risk of any liability arising from its own conduct. Neither Party agrees to insure, defend or indemnify the other.

16. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Settlement Agreement, and specifically retain all immunity and all defenses available to them as sovereigns pursuant to WYO. STAT. ANN. § 1-39-104(a) and all other state law.

17. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Settlement Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Settlement Agreement shall operate only among the Parties to this Settlement Agreement.

18. This Settlement Agreement is binding upon Basin Electric, its successors and assigns, and upon the DEQ/AQD.

19. This Settlement Agreement is not binding between the Parties until fully executed by each Party.

20. This Settlement Agreement may only be amended in writing, signed by both Parties.

21. The construction, interpretation and enforcement of this Settlement Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Settlement Agreement and the Parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.

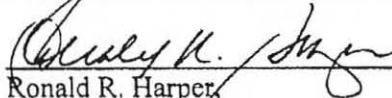
22. This Settlement Agreement consisting of seven (7) pages represents the full and complete agreement of Basin Electric and the DEQ/AQD relating to EQC Docket No. 10-2802 and supersedes any prior discussions or negotiations of Basin Electric and the DEQ/AQD related to the same.

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23. This Settlement Agreement may be executed in any number of separate counterparts any one of which need not contain the signature of more than one Party but all of such counterparts together shall constitute one agreement. The separate counterparts may contain original, photocopy, or facsimile transmissions of signatures.

By signing this Settlement Agreement, the signatory certifies that they have read, understood, and agreed to the terms and conditions of this Settlement Agreement and are authorized to bind their respective Party to this Settlement Agreement:

FOR BASIN ELECTRIC POWER COOPERATIVE:



Ronald R. Harper,
Chief Executive Officer and General Manager

11-16-10

Date

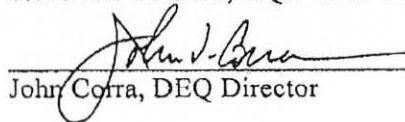
FOR DEPARTMENT OF ENVIRONMENTAL QUALITY:



Steven A. Dietrich, AQD Administrator

11-16-10

Date




John Corra, DEQ Director

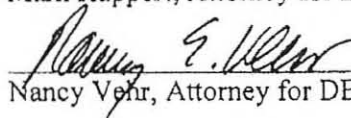
11/16/10

Date

Approval as to Form:



Mark Ruppert, Attorney for Basin Electric



Nancy Vehr, Attorney for DEQ/AQD