

BEFORE THE  
WYOMING ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**  
JUL 06 2011

Jim Ruby, Executive Secretary  
Environmental Quality Council

IN THE MATTER OF THE OBJECTION )  
TO THE MINE PERMIT OF )  
LOST CREEK ISR, LLC, TFN 4 6/268 )

Docket No. 11-4803

**AMENDED WRITTEN OBJECTIONS**

COMES NOW the Wyoming Outdoor Council, by and through its attorney, Steve Jones, and hereby files its amended written objections in the above-entitled matter and hereby states the following:

Groundwater zone designation

1. Wyoming Outdoor Council objects to the reclassification of the HJ Horizon of the Battle Spring Formation as Class V (Mineral Commercial) groundwater of the state. The reclassified region includes the area that is part of the commercially producible mineral (uranium), but also includes an area beyond that zone, specifically an area outside of this zone, out to and including the next 1/4 1/4 section. We do not believe this is justifiable, in that the additional expanded commercial mineral zone is not justified and is not necessary to produce uranium for the permittee, Lost Creek ISR, LLC. There has been no showing that expansion of the Mineral Commercial zone is justified or warranted.

2. Extending the Class V (Mineral Commercial) groundwater zone 1/4 mile beyond the monitoring well perimeter is also completely unjustified. The monitoring wells should be the absolute outside limit for the extension of any mineral commercial zone. This is due to the fact that assuring clean-up of the groundwater after mining operations cease cannot be assured beyond the monitoring well perimeter. To assume the opposite is speculative at best, and dangerous at worst.

Geologic considerations

3. Since a geologic fault line transects the mining area, we do not believe that adequate precautions have been taken to prevent lixiviant and associated minerals and contaminants from moving along that fault line and contaminate groundwater outside of the mineral zone and associated cone of depression for the mining operations. Given the groundwater regime in the area, and surface waters which may be affected, additional precautions are necessary.

Locating and properly abandoning old wells

4. We do not believe that adequate precautions have been taken with regard to old abandoned wells in the area. Before being issued a mining permit, a thorough survey of the area should be undertaken to identify, and then plug and properly abandon old wells (both in situ and oil and gas wells, as well as water wells) that currently exist in the mining area. This is necessary in order to prevent lixiviant, associated minerals, and contaminants from moving along such available conduits and contaminating groundwater outside the mineral zone and/or mining permit area.

#### Compliance with sage grouse core habitat requirements

5. The proposed Lost Creek mine site, as described in the Lost Creek ISR permit, is located in the middle of prime sage grouse core habitat. As such, the issuance of this permit violates the terms of Governor Meade's Executive Order, No. 2011-5.

6. The Lost Creek permit has been issued in violation of Executive Order No. 2011-5, pertaining to the obligation of all state agencies issue permits and other authorizations only to the extent that those permits will not violate the requirements of the executive order. Specifically, the Executive Order No. 2011-5 states:

c. The number of active mining development areas (e.g., operating equipment and significant human activity) are not to exceed an average of one site per square mile (640 acres) within the DDCT [Density/Disturbance Calculation Tool]. Executive Order 2011-5, at p. 12

The disturbance contemplated by the Lost Creek Mine Site permit, including roads, power lines, well pads, pipelines, buildings and processing facilities will completely occupy a large area and will effectively eliminate sage grouse habitat within the mine project site boundary.

7. Furthermore, it does not appear that the general stipulations of EO 2011-5 will be complied with in all respects. Those stipulations, which should apply to this Lost Creek mine site include the following:

"1. Surface Disturbance: Surface disturbance will be limited to 5% of suitable sage-grouse habitat per an average of 640 acres. The DDCT process will be used to determine the level of disturbance. Distribution of disturbance may be considered and approved on a case-by-case basis. Unsuitable habitat should be identified in a seasonal and landscape context, on a case-by-case basis, outside the 0.6 mile buffer around leks. This will incentivize proponents to locate projects in unsuitable habitat to avoid creating additional disturbance acres. Acres of development in unsuitable habitat are not considered disturbance acres. The primary focus should be on protection of suitable habitats and protecting from habitat fragmentation. See Appendix I for a description of suitable, unsuitable habitat and disturbance."

"2. Surface Occupancy: Within 0.6 miles of the perimeter of occupied sage-grouse leks there will be no surface occupancy (NSO). NSO, as used in these recommendations,

means no surface facilities including roads shall be placed within the NSO area. Other activities may be authorized with the application of appropriate seasonal stipulations, provided the resources protected by the NSO are not adversely affected. For example, underground utilities may be permissible if installation is completed outside applicable seasonal stipulation periods and significant resource damage does not occur. Similarly, geophysical exploration may be permissible in accordance with seasonal stipulations."

"3. Seasonal Use: Activity (production and maintenance activity exempted) will be allowed from July to March 14 outside of the 0.6 mile perimeter of a lek in core areas where breeding, nesting and early brood-rearing habitat is present. In areas used solely as winter concentration areas, exploration and development activity will be allowed March 14 to December 1. Activities in unsuitable habitat may also be approved year-round (including March 15 to June 30) on a case-by-case basis (except in specific areas where credible data shows calendar deviation). Activities may be allowed during seasonal closure periods as determined on a case-by-case basis. While the bulk of winter habitat necessary to support core sage-grouse populations likely occurs inside Core Population Areas, seasonal stipulations (December 1 to March 14) should be considered in locations outside Core Population Areas where they have been identified as winter concentration areas necessary for supporting biologically significant numbers of sage-grouse nesting in Core Population Areas. All efforts should be made to minimize disturbance to mature sagebrush cover in identified winter concentration areas."

"4. Transportation: Locate main roads used to transport production and/or waste products > 1.9 miles from the perimeter of occupied sage-grouse leks. Locate other roads used to provide facility site access and maintenance > 0.6 miles from the perimeter of occupied sage-grouse leks. Construct roads to minimum design standards needed for production activities."

"5. Overhead Lines: Bury lines when possible, if not; locate overhead lines at least 0.6 miles from the perimeter of occupied sage-grouse leks. New lines should be raptor proofed if not buried."

"6. Noise: New noise levels, at the perimeter of a lek, should not exceed 10 dBA above ambient noise (existing activity included) from 6:00 pm. to 8:00 am. during the initiation of breeding (March 1 - May 15). Ambient noise levels should be determined by measurements taken at the perimeter of a lek at sunrise."

"7. Vegetation Removal: Vegetation removal should be limited to the minimum disturbance required by the project. All topsoil stripping and vegetation removal in suitable habitat will occur between July 1 and March 14 in areas that are within 4 miles of an occupied lek. Initial disturbance in unsuitable habitat between March 15 and June 30 may be approved on a case-by-case basis."

"8. Sagebrush Treatment: Sagebrush eradication is considered disturbance and will contribute to the 5% disturbance factor. Northeast Wyoming, as depicted in Figure 1, is of particular concern because sagebrush habitats rarely exceed 15% canopy cover and

large acreages have already been converted from sagebrush to grassland or cropland. Absent sonic demonstration that the proposed treatment will not reduce canopy cover to less than 15% within the treated area, habitat treatments in northeast Wyoming (Figure 1) should not be conducted. In stands with less than 15% cover, treatment should be designed to maintain or improve sagebrush habitat. Sagebrush treatments that maintain sagebrush canopy cover at or above 15% total canopy cover within the treated acres will not be considered disturbance. Treatments that reduce sagebrush canopy cover below 15% will be allowed, excluding northeast Wyoming (Figure 1), if all such treated areas make up less than 20% of the suitable sagebrush habitat within the DDCT, and any point within the treated area is within 60 meters of sagebrush habitat with 10% or greater canopy cover. Treatments to enhance sagebrush grassland will be evaluated based upon the existing habitat quality and the functional level post-treatment."

"9. Monitoring/adaptive response: Proponents of new projects are expected to coordinate with the permitting agency and local WGFD biologist to determine which leks need to be monitored and what data should be reported by the proponent. Certain permits may be exempted from monitoring activities pending permitting agency coordination. If declines in affected leks (using a three-year running average during any five year period relative to trends on reference leks) are determined to be caused by the project, the operator will propose adaptive management responses to increase the number of birds. If the operator cannot demonstrate a restoration of bird numbers to baseline levels (established by pre disturbance surveys, reference surveys and taking into account regional and statewide trends) within three years, operations will cease until such numbers are achieved."

"10. Reclamation: Reclamation should re-establish native grasses, forbs and shrubs during interim and final reclamation to achieve cover, species composition, and life form diversity commensurate with the surrounding plant community or desired ecological condition to benefit sage-grouse and replace or enhance sage-grouse habitat to the degree that environmental conditions allow. Seed mixes should include two native forbs and two native grasses with at least one bunchgrass species. Where sagebrush establishment is prescribed, establishment is defined as meeting the standard prescribed in the individual reclamation plan. Landowners should be consulted on desired plant mix on private lands. The operator is required to control noxious and invasive weed species, including cheatgrass. Rollover credit, if needed, will be outlined in the individual project reclamation plan."

"Credit may be given for completion of habitat enhancements on bond released or other minimally functional habitat when detailed in a plan. These habitat enhancements may be used as credit for reclamation that is slow to establish"

Executive Order 2011-5, at pp 8 - 10

8. It should be noted that this proposed Lost Creek ISR project occurs within one of the Sage-Grouse Core Population Areas as delineated by Governor Freudenthal's Sage-Grouse Implementation Team in 2008 and officially designated by the WGFD pursuant to the Governor's Executive Order (EO) 2008-2. Thus, the status of this Lost Creek

Mine site as core sage grouse habitat is not new with Governor Meade's Executive Order. Executive Order 2011-5 is the successor to EO 2008-2. The company, Lost Creek ISR LLC, and the Department of Environmental Quality have been on notice since 2008 of the need to protect this area as sage grouse core habitat area.

#### Prayer for Relief

Wherefore the Petitioner, Wyoming Outdoor Council, prays and asks that the Environmental Quality Council grant the following relief:

- A. Designate the Class V (Mineral Commercial) groundwater of the State zone for this mining permit to no more than the actual mineralization zone to be utilized by the mining operator in this matter.
- B. Modify the mining permit so that the monitoring well ring is located at the edge of the Class V (Mineral Commercial) groundwater zone, in order to detect excursions beyond the zone immediately.
- C. Require that the mining permittee locate and properly plug and abandon all wells (other than those in use) in the mining permit area.
- D. Modify the mining permit so that the permit complies with the terms and conditions of Executive Order 2011-5 with respect to sage grouse core habitat protections, as set forth in that order.
- E. Modify the permit to fully comply with state and federal law.
- F. Grant such other and further relief as the Environmental Quality Council may deem just and equitable.

Dated this 6th day of July, 2011.

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Certificate of Service

I, Steve Jones, hereby certify that I served the above Amended Written Objections to the following individuals on this 6th day of July, 2011, via email, and also via first class U. S. Mail, postage prepaid, to:

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Steve Jones