

FILED

OCT 06 2011

Jim Ruby, Executive Secretary
Environmental Quality Council

**BEFORE THE
ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

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

Docket No. 11-4803

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER

1. The above entitled matter came on for final hearing on August 3, 2011 at 8:30 a.m., 3200 Elk St. Conference Room 169, Department of Transportation, Rock Springs, WY. Present on behalf of the Objectors was Steve Jones. Present on behalf of the Department of Environmental Quality (DEQ) was Assistant Attorney General Luke Esch. Present on behalf of the permit applicant, Lost Creek ISR, LLC. (High Plains) was Penne Gopelrud, Michelle Kales, Mary Beth Jones and Bret Fox.
2. Present in person from the Council was the Presiding Officer, Tom Coverdale and David Searle. Present via teleconference for the council was Dr. Fred Ogden and Chairman Tim Flitner.
3. Testifying on behalf of the Objectors was VICKI HERREN and SOPHIE OSBORN. Testifying on behalf of the DEQ was MARK MOXLEY, AMY BOYLE, SCOTT GAMO. Testifying on behalf of Lost Creek was JOHN WILLIAM CASH and ERROL PATRICK LAWRENCE.
4. The following Exhibits were offered and received. Lost Creek Exhibit No. 1, 2, 20, 22, 5, 25, 10, 26, 27, 18 and 28. WOC Exhibit No. 26, 44, 38, 71, 30, 70, 67, 94, 18, 12, 15, 16, 20, 9, 10, 63.
5. The Council convened on September 26th, 2011 at 8:00 a.m. via teleconference to decide this matter. Motion to approve permit was made by Tim Flitner. The second was made by Rich Fairservis. After discussion the question was called. Voting Aye: Tim Flitner, Rich Fairservis, Tom Coverdale, John Morris and David Searle. Voting Nay: Dennis Boal. Absent/Abstaining: Dr. Fred Ogden.

FINDINGS OF FACTS

6. Lost Creek filed it's application for permit in December 20, 2007. *Lost Creek Ex. 1*
7. The DEQ determined the permit application was complete in May of 2008. *EQC I-Ir'g Tr. Vol. I, 24: 6-19*
8. Lost Creek published notice of the permit in the Rawlins Daily times in Carbon County Wy. On May 4th, 11th, 18th and 25th 2011.

9. On June 24, 2011 the Wyoming Outdoor Council(WOC) filed a written letter of objection to the issuance of the Lost Creek ISR LLC, in situ uranium mining permit.
10. On July 6th, 2011 WOC filed an Amended Written Objection .
11. The objections were classified into four categories.
 - a. Groundwater zone classifications
 - b. Geologic considerations
 - c. Locating and properly abandoning old wells
 - d. Compliance with sage grouse core habitat requirements
12. The parties agree, that the groundwater reclassification boundary for the permit needs to be the same as the aquifer exemption boundary approved by the Environmental Protection Agency (EPA). Since the hearing, EPA, DEQ and Lost Creek have reached an agreement on this issue and EPA has approved Lost Creek's revised groundwater reclassification boundary. The revised statement of basis and groundwater reclassification boundary approved by EPA should be incorporated into the permit.
13. On August 23, 2011, EPA approved the aquifer exemption at Lost Creek as set forth in the August 11, 2011 Statement of Basis. *Lost Creek Exhibit 2*
14. Lost Creek was required to perform pump tests to determine the extent of the hydrologic connectivity across the fault. The testing revealed that the fault acted as a partial hydrologic barrier. *EQC Hr'g Tr. Vol. I, 28:20-23. EQC Hr'g Tr. Vol. I, 102:3-9.*
15. Lost Creek was required to submit cross sections showing what types of formations were juxtaposed across the fault, and also required monitoring wells be placed in these areas to monitor for possible excursions. *EQC Hr'g Tr. Vol. 1, 29:2-13.*
16. Lost Creek is required to monitor the aquifers across the fault to assure that no fluids would escape the production area. *EQC Hr'g Tr. Vol. 1, 104:10-20.*
17. DEQ and Lost Creek have an ongoing process in place that identifies any newly discovered old wells and insures that they are properly abandoned upon discovery. All abandoned wells of record have been identified and tested and properly abandoned. *EQC Hr'g Tr. Vol. 1, 31: 5-25 and 32, 33, 34,35,and 36: 1-9.*
18. Lost Creek has made a commitment to conduct pump tests in order to locate and properly abandon any improperly abandoned well which could impact its mining operation. *EQC Hr'g Tr. Vol. I, 33: 10-24.*
19. Per the recommendations of the Executive Order, DEQ relied on Game and Fish to evaluate the proposed project and make additional recommendations to DEQ to include in the proposed permit. *See Executive Order at 7-8.*

20. The credible evidence regarding compliance with the Sage Grouse Executive Order indicated that Game and Fish was consulted regarding compliance. Game and Fish issued a letter outlining their analysis of the project and approved the project as complying with the Executive Order. *EQC Hr'g Tr. Vol. 1, 44: 16-25; 45: 1-10. Lost Creek Exhibit 22.*
21. Game and Fish was confronted with the dilemma of either creating additional habitat fragmentation by requiring additional roads outside of the 0.6 mile buffer, which is discouraged in the Executive Order, or permitting roads within 0.6 miles of a lek, which is also discouraged in the Executive Order. *EQC Hr'g Tr. Vol. I, 11 6:2-23.*
22. The Executive Order allows for the use of discretion by the Game and Fish in determining how to balance competing interests or in resolving conflicts between recommended criteria. *EQC Hr'g Tr. Vol. 1, 11: 8-19. EQC Hr'g Tr. Vol. I, 248: 1-6.*
23. WOC's expert testified that, in her opinion, the WGFD's determination was within the range of the intent underlying the terms of the Executive Order. She stated that habitat fragmentation was the number one threat to sage grouse in Wyoming. *EQC Hr'g Tr. Vol. I, 238 :15-18.*
24. The provision of the Executive Order requiring haul roads to be 1.9 miles from a lek was subject to interpretation and intended to address haul roads associated with large amounts of traffic similar to gas production in the Jonah Field rather than a small amount of traffic for the Lost Creek project. *EQC Hearing Tr. Vol. I, 129 - 130.*
25. The traffic to be expected on the main roads of the facility is approximately .8 big trucks per day and 22 light vehicles per day. *EQC Hr'g Tr. Vol. II, 445: 10-21.*

CONCLUSIONS OF LAW

26. All notice requirements for the hearing have been met pursuant to the Act, the applicable rules of practice and procedure and non-coal rules and regulations
27. A contested case hearing was held on the permit application before the Environmental Quality Council (Council) pursuant to *WYO. STAT. ANN. § 35-1 l-406(k)*.
28. The burden of proving arbitrary administrative action is on the complainant, and this burden includes not only the clear presentation of the question, but also placement of evidence in the record to sustain the complainant's position. *Knight v. Environmental Quality Council, 805 P.2d 268,273 (Wyo. 1991).*
29. The Supreme Court has consistently held that it "[gives] great deference to an agency's findings of fact and [does] not reverse them unless they are contrary to the great weight of the evidence, or not supported by substantial evidence." *Northfork Citizens For Responsible Dev. v. Bd. Of Cnty. Comm'rs of Park Cnty.* 228 P.3d 838,854 (Wyo. 2010).

30. The requested permit, other than a surface coal mining permit, shall be granted if the applicant demonstrates that the application complies with the requirements of this act and all applicable federal and state laws. Wyo. Stat. Ann. §35-11-406(m) (emphasis added). act all applicable statute then identifies twelve specific and exclusive reasons for which the Department may deny a permit application. *WYO. STAT. ANN. § 35-11-406(m)*
31. Lost Creek's application is complete within the meaning of *WYO. STAT. ANN. § 35-11-406(m)*.
32. Properly issued executive orders are part of the laws and policy of the State of Wyoming and therefore authorized activities must satisfy the requirements of executive orders.
33. The Executive Order directs state agencies to "maintain and enhance Greater Sage-Grouse habitats and populations in a manner consistent with [the] Executive Order." *See Executive Order at 3.*
34. To accomplish this goal, the Executive Order establishes recommended stipulations that apply to projects proposed in core areas. However, the Executive Order also recognizes that some adjustments should be made to the stipulations based on local conditions. *Id. at 4.*

The Executive Order states: State agencies shall strive to maintain consistency with the items outlined in this Executive Order, but it should be recognized that adjustments to the stipulations may be necessary based upon local conditions and limitations. The goal is to minimize future disturbance by co-locating **proposed disturbances within areas already disturbed** or naturally unsuitable. *Id.* (emphasis added)

ORDER

WHEREFORE, the objections are overruled and the permit of LOST CREEK ISR, LLC. TFN 4 6/268 is approved to be issued by the Department of Environmental Quality as modified by and in compliance with the EPA letter of August 31, 2011.

SO ORDERED THIS 5th day of October, 2011.


 Tom Coverdale, Presiding Officer
 Environmental Quality Council

CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 6th day of October, 2011, I served a copy of the foregoing **FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER** by electronic mail to the following:

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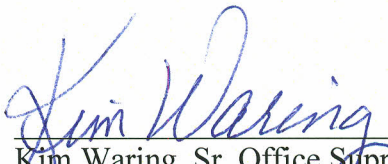
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