

FILED

SEP 02 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

**STIPULATION OF THE WYOMING DEPARTMENT OF ENVIRONMENTAL
QUALITY AND APPLICANT LOST CREEK ON EPA'S FINAL APPROVAL OF THE
REVISED AQUIFER BOUNDARY**

The Wyoming Department of Environmental Quality (the "Department") and Applicant Lost Creek ISR, LLC ("Lost Creek"), by and through their undersigned counsel, hereby submit this Stipulation of the Department and Applicant Lost Creek on EPA's Final Approval of the Revised Aquifer Boundary (the "Stipulation") by the Region 8 office of the U.S. Environmental Protection Agency ("EPA").

RECITALS

WHEREAS, on April 28, 2011, the Department submitted its initial Statement of Basis to the EPA, approving the reclassification of a portion of the HJ Horizon of the Battle Spring Formation as Class V (Mineral Commercial) ground water. After initiating a consistency review of the Department's submission, on June 8, 2011 the EPA requested additional information to support the proposed aquifer reclassification boundary.

WHEREAS, the Department and Lost Creek responded to EPA's request by engaging in a series of technical staff meetings, which resulted in the submission of an engineered solution and revised aquifer reclassification boundary (the "Revised Boundary") that would be more stringent than state reclassification regulations and meet federal aquifer exemption standards and requirements. During the hearing in this matter held on August 3 and 4, 2011, the Department and Lost Creek presented evidence and fully apprised the Council and Petitioner of these ongoing efforts.

WHEREAS, upon the close of evidence in the hearing on this matter on August 4, 2011, the Presiding Officer directed the parties to submit by August 31, 2011 a stipulated condition that the Council could consider in the event that final approval of the Revised Boundary had not been obtained from the EPA by that time.

WHEREAS, thereafter, on August 11, 2011 the Department formally submitted a revised Statement of Basis to the EPA, fully incorporating its analysis of the Revised Boundary as discussed informally with EPA staff and as described to the Council at the hearing. Copies of the Department's submission, including (i) the cover letter from John Wagner, Administrator of the Department's Water Quality Division, and (ii) the revised Statement of Basis were included as exhibits to Lost Creek's Closing Argument submitted to the Council on August 26, 2011.

WHEREAS, EPA reviewed the revised application and supporting information, and issued a letter approving the Department's proposed reclassification as consistent with EPA's aquifer exemption criteria on August 23, 2011. EPA's approval letter and Figure II-1, which depicts the Revised Boundary as presented at the hearing and submitted to the EPA and which is expressly incorporated by reference into the EPA's approval letter, are attached to this Stipulation as Attachment A.

WHEREAS, although the EPA's approval of the Revised Boundary obviates the need for a stipulated condition as requested by the Presiding Officer, Lost Creek and the Department have attempted to coordinate with the Petitioner in an effort to submit a uniform stipulation or statement to the Council. Due to the limited availability of Petitioner's counsel following Lost Creek's receipt of the EPA approval letter, the parties have been unable to finalize a three-party joint stipulation. The Department and Lost Creek have therefore elected and agreed to submit this two-party Stipulation in order to apprise the Council of the status of the Revised Boundary.

NOW, THEREFORE, as evidenced by and based upon the EPA's approval of the Revised Boundary, the Department and Lost Creek now stipulate and agree as follows:

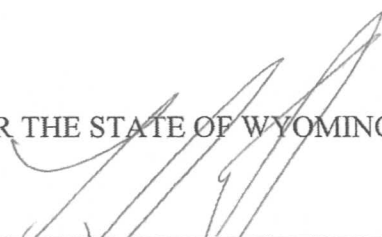
AGREEMENT

1. The Revised Boundary as approved and depicted in the documents attached hereto as Attachment A complies with all applicable state and federal law, and fully addresses and resolves the issues raised in Petitioner's first and second amended written objections.
2. In light of the EPA's August 23, 2011, approval of the Revised Boundary, there is no basis for the Council to condition its approval of the Application upon that approval, or to otherwise modify the terms of the Application.
3. In order to facilitate administration and oversight of the Lost Creek project in accordance with the terms and conditions imposed by the revised Statement of Basis and the Revised Boundary, the Parties agree that the EPA approval letter and Figure II-1, which are attached hereto as Attachment A, should be added to the Adjudication Appendix of the Application and hereafter maintained by the Department together with the multiple volumes that constitute the body of the Application.

Respectfully submitted this 31st day of August, 2011.

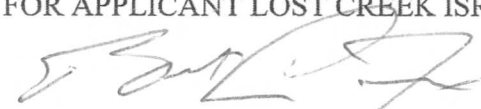
[signature page follows]

FOR THE STATE OF WYOMING



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FOR APPLICANT LOST CREEK ISR, LLC



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CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August, 2011, a true and correct copy of this **STIPULATION OF THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY AND APPLICANT LOST CREEK ON EPA'S FINAL APPROVAL OF THE REVISED AQUIFER BOUNDARY** was filed by electronic mail to *kim.waring@wyo.gov* and served by electronic mail and U.S. Mail, postage prepaid, to the following:

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ATTACHMENT A



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

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Phone 800-227-8917
<http://www.epa.gov/region08>

AUG 23 2011

Ref: 8P-W-GW

Mr. Kevin Frederick
Wyoming Department of Environmental Quality
Water Quality Division
122 West 25th Street
Cheyenne, Wyoming 82002

Re: Lost Creek ISR, LLC Project
HJ Horizon Aquifer Exemption
Sweetwater County, Wyoming

Dear Mr. Frederick:

Based on a review of the revised application and additional supporting information provided by Lost Creek ISR, LLC and the Wyoming Department of Environmental Quality, the U.S. Environmental Protection Agency, Region 8 has no objection with the WDEQ's proposed reclassification of a portion of the HJ Formation of the Battle Spring Formation as Class V (Mineral Commercial) Groundwater of the State, pursuant to Wyoming Water Quality Rules and Regulations Chapter 8.

This proposed groundwater reclassification is consistent with aquifer exemption criteria established at 40 CFR §146.4. This response on reclassification of the referenced portion of the HJ Formation of the Battle Spring Formation, and the EPA approval of that area as an exempted aquifer, will be considered a final non-substantial revision of the WDEQ Underground Injection Control Program pursuant to 40 CFR §144.7(b)(3), §145.32 and Ground Water Protection Branch Guidance 34.

BACKGROUND

In conjunction with a Class III UIC in-situ recovery (ISR) uranium mining permit, an aquifer exemption is required to inject into and mine the HJ Formation of the Battle Spring Formation because this aquifer meets the definition of an Underground Source of Drinking Water. The HJ Formation of the Battle Spring Formation produces sufficient quantity of ground water to supply a public water system and the total dissolved solids ranges from 236 to 706 mg/L.

The HJ Formation of the Battle Spring Formation contains uranium mineralization and is the production zone in the Lost Creek ISR Project. Currently, there are no known domestic drinking water wells completed into the proposed exemption area of the HJ Formation of the Battle Spring Formation.

Based on a review of the information provided, the EPA concurs with the WDEQ's conclusions concerning the aquifer exemption criteria listed below:

- it does not currently serve as a source of drinking water, and
- it is mineral producing and can be demonstrated to contain minerals that considering their quantity and location are expected to be commercially producible.

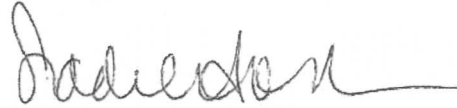
DESCRIPTION OF THE EXEMPTED AQUIFER


The depth and extent of the aquifer reclassification/exemption is as follows:

HJ Formation of the Battle Spring Formation with average thickness of 120 feet, located approximately 285 to 650 feet below ground surface (elevation range is greater than 120 feet because of displacement caused by Lost Creek fault), and horizontally described by the monitor well ring plus an additional 120 feet beyond the monitor well ring as shown in the July 29, 2011, Figure II-1 which was received by the EPA on August 17, 2011.

Please contact Wendy Cheung of my staff at (303)312-6242, with questions or concerns regarding this matter.

Sincerely,



 Stephen S. Tuber
Assistance Regional Administrator
Office of Partnerships and Regulatory Assistance

cc: Nancy Nuttbrock, WDEQ
Bob Smith, OGWDW

