

**UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

No. 14-9512

STATE OF WYOMING

Petitioner,

v.

UNITED STATES ENVIRONMENTAL

PROTECTION AGENCY, *et al.*,

Respondents,

and

THE NORTHERN ARAPAHO TRIBE, *et al.*,

Intervenors

No. 14-9514

WYOMING FARM BUREAU FEDERATION,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL

PROTECTION AGENCY, *et al.*,

Respondents,

and

THE NORTHERN ARAPAHO TRIBE, *et al.*,

Intervenors.

No. 14-9515

DEVON ENERGY PRODUCTION COMPANY, L.P.,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents,

and

THE NORTHERN ARAPAHO TRIBE, *et al.*

Intervenors.

Petition for Review of Final Action of the
United States Environmental Protection Agency

**INTERVENORS CITY OF RIVERTON, WYOMING and
FREMONT COUNTY, WYOMING, CORRECTED OPENING BRIEF
Preliminary Brief (Deferred Appendix Appeal)**

ORAL ARGUMENT REQUESTED

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GLOSSARY

1905 Act	33 Stat 1016
EST:	Eastern Shoshone Tribe
District:	Fremont County Solid Waste Disposal District
NAT:	Northern Arapaho Tribe
RMC:	Riverton Municipal Code
S&A LOC:	Shoshone and Arapaho Law & Order Code
TERO:	Tribal Employment Rights Office
Tribes:	Eastern Shoshone and Northern Arapaho Tribes
WDEQ:	Wyoming Department of Environmental Quality
WRIR:	Wind River Indian Reservation

STATEMENT OF RELATED CASES

The following prior cases relate to this matter:

- *N. Arapaho Tribe v. Harnsberger*, 697 F.3d 1272 (10th Cir. 2012);
- *Yellowbear v. Wyo. Atty. General*, 380 F. App'x. 740 (10th Cir. 2010);
- *N. Arapaho Tribe v. Harnsberger*, 660 F. Supp. 2d 1264 (D. Wyo. 2009);
- *Yellowbear v. Wyo. Atty. General*, 636 F. Supp. 2d 1254 (D. Wyo. 2009);
- *Yellowbear v. State*, 174 P.3d 1270 (Wyo. 2008); and
- *State v. Moss*, 471 P.2d 333 (Wyo. 1970).

STATEMENT OF THE CASE

These Intervenors have reviewed and concur in the Briefs filed herein by the State of Wyoming and the Wyoming Farm Bureau Federation, and incorporate by reference the information provided therein, including, but not limited to, the Statements of the Case, Issues, Jurisdiction, Related Cases, and Standards of Review.

Intervenors seek to supplement the record with the additional addenda supplied in the appendix hereto, and concur with the State's Motion to Complete and Supplement the Record filed herein. Supplementation of the record is appropriate, as de novo review is the proper standard in this case, allowing the

Court's review to extend beyond the record which was before the agency. If, however, the Court does not rule in favor of de novo review, supplementation is still proper, as the EPA's decision was based on an incomplete, selective record.¹

SUMMARY OF THE ARGUMENT

Subsequent treatment of the 1905 Act area evinces diminishment. Residents of the area, both tribal and non-tribal, have relied on the status quo for over 100 years. If this were to change, tribal jurisdiction would extend over non-Indians in multiple legal matters.

ARGUMENT

The subsequent treatment of ceded lands can provide evidence of diminishment, though not with as much force as the plain language of the Act and the contemporaneous circumstances. South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 344 (1998). Indeed, subsequent treatment can show that diminishment has occurred. For over a century, the State of Wyoming, Fremont County, Wyoming and The City of Riverton, Wyoming have exercised exclusive authority

¹ If de novo review does not govern this case, the records cited as CTY-WR-_____ are subject to Wyoming's pending May 9, 2014, motion to supplement and complete the record. Pursuant to the Court's order, Appellant-Intervenors submit these records in a separate addendum.

in the ceded lands without any objections from or exercise of authority by the United States, the Northern Arapaho Tribe (NAT) or the Eastern Shoshone Tribe (EST). Therefore, the status quo on the ceded, unrestored lands since 1905 unequivocally evidences diminishment.

I. LIQUOR LICENSING

One of the first laws passed by the City was Ordinance No. 22 Concerning Intoxicating Liquors (Dec. 11, 1906), which authorized the sale of intoxicating beverages within the town limits pursuant to town-issued permits. *See* Wyo. Pet'r Br. 32. Since that time the City of Riverton has continued to issue liquor license permits, with 32 permits currently issued in the City. The Town of Pavillion likewise has currently issued two licenses. Fremont County has also historically issued liquor license permits within the ceded area, with two permits currently issued therein. All of the above-referenced liquor licenses are issued under the State's authority, pursuant to W.S. §12-4-101. CTY-WR-000001-35 ¶¶ 3-4, CTY-WR-000036-37 ¶¶ 4-5.

The EST and the NAT have implemented a Law and Order Code (S&A LOC). Title XIV, Chapter 12, Liquor Regulation, regulates the selling of alcoholic beverages on the Wind River Indian Reservation (WRIR). Pursuant to §14-12-3 S&A LOC, no person shall engage in the sale of intoxicating beverages within

Indian Country under the jurisdiction of the Tribes unless duly licensed by the Tribes and, in the case of non-Indians, by the Tribes and the State of Wyoming. Joint State and federal regulation of the sale of intoxicating beverages on Indian reservations was recognized in Rice v. Rehner, 463 U.S. 713 (1983).

Despite having the ability to regulate the licensing and sale of intoxicating beverages on the Reservation and provisions for such regulation included in the S&A LOC, neither tribe nor the federal government has ever sought to enforce the dual license requirement in the ceded area. CTY-WR-000001-35 ¶ 4.

Pursuant to W.S. §12-4-106, a State liquor license is valid for a period of one year. At the end of the one-year period a public hearing is required on the renewal, and notice of the hearing is published in a local newspaper. W.S. §12-4-104. Except during prohibition, each City-issued permit has undergone this public process every year since 1906 when Ordinance 22 was passed by the City and every year since Fremont County has been issuing liquor licenses. Such hearings have continued since the inception of the S&A LOC. However, neither NAT, EST, nor the federal government have ever appeared at a public hearing on the issuance or renewal of liquor licenses by either the City or Fremont County to protest the issuance of licenses within the ceded area without the corresponding issuance of a tribal liquor license. CTY-WR-000001-35 ¶ 4.

The history of liquor licensing in the ceded area has only been to require a state license issued by either the City of Riverton or Fremont County. Neither Tribe nor the federal government has ever objected to issuance of a liquor license by either entity, nor have they ever sought enforcement against a non-Indian licensee for not obtaining a tribal liquor license. The reason is simple: Riverton is not a part of the reservation and, therefore, it falls outside the Tribes' jurisdiction. If the ceded area is now deemed to be on the Reservation, it will invalidate all liquor licenses in the ceded area and grant Indian liquor dealers a competitive advantage over non-Indian dealers.

II. TRIBAL EMPLOYMENT RIGHTS CODE AND BUSINESS LICENSES

There are at least 1,114 businesses located within the City of Riverton and located in Fremont County in the ceded area. CTY-WR-000038-41 ¶ 6. Some of those businesses require licensure, such as those selling intoxicating beverages, taxis, and those in the construction business. However, the majority of the businesses are not regulated by the City or Country. The Tribes, by contrast, regulate all businesses under both their Tribal Employment Code and Business Licensure regime.

The Tribal Employment Rights Office Code (TERO) is contained in Title X of the S&A LOC. Under §10-1-2(6) of TERO, an employer is defined to be any person or firm that employs two or more persons, but excludes Federal, State and County governmental entities. Under §10-1-2(7), an employer must adhere to TERO if he is engaged in work on the Reservation, which is defined as spending a majority of his time on the Reservation. The main premise of TERO is that employers are required to give preference in hiring, promotion, training and other aspects of employment to Tribal members and other local Indians. See §§10-1-4, 10-2-2, and 10-3-9 S&A LOC. Additionally, pursuant to §10-1-7 S&A LOC there is a \$500.00 per day penalty for non-compliance and employers can be prohibited from conducting business on the Reservation. Pursuant to §10-2-7, if the employer has gross sales of over \$100,000.00 and employs 20 or more persons, an annual fee of .5% of the employer's annual payroll must be paid to TERO.

Title XIV, Chapter 17 of the S&A LOC is the Business License Code. Section 14-17-2 requires that every person who carries on business activity within the WRIR must obtain a Wind River Tribal License. This is an annual license, ranging in cost from \$25.00 to \$50.00, and there is imposed a fine of \$350.00 for engaging in business on the Reservation without a Tribal License. S&A LOC §§14-17-5, 14-17-8, 14-17-11(1)(a).

Neither TERO nor the S&A Business License Code have ever been enforced in the ceded area. No businesses in the City of Riverton, except those that engage in business on the diminished Reservation, have been required to pay a TERO fee or to obtain a Tribal Business License. The City of Riverton is not an excluded entity and employs more than 20 employees and has gross revenue exceeding \$100,000.00. However, it has never paid such a fee and has never been requested to pay a TERO fee. CTY-WR-000001-35 ¶ 5. Furthermore, pursuant to W.S. §27-9-101 et. seq., the Wyoming Fair Employment Practices Act of 1965, it is a discriminatory or unfair employment practice for an employer to refuse to hire, to discharge, to promote or demote, or to discriminate in matters of compensation or the terms and conditions or privileges of employment against, a qualified disabled person or any person otherwise qualified, because of age, sex, race, creed, color, national origin, ancestry or pregnancy. W.S. §27-9-105(a)(i). This Act has been enforced within the ceded area, while TERO and Tribal business license requirements have not.

The Tribes have never enforced the provisions of the Tribal Employment Rights Code or the Business Code in the City of Riverton or the ceded area. To now require enforcement of TERO in the ceded area would require employers to violate state law by granting a preference to Indians. Additionally, it would strike a

financial blow to existing businesses, possibly leading some to cease commerce and vacate the ceded area. CTY-WR-000001-35 ¶ 5.

III. ZONING AND PLANNING

The City of Riverton has an extensive system for zoning and planning under the authority of W.S. §§15-1-501 et seq. and 15-1-601 et seq. The Riverton Municipal Code (RMC) provides fourteen different zoning classifications in the City (RMC §17.12.010), including five different residential classifications, which allow for differing levels of housing from single-family to multiple-family dwellings with any number of living units per building or parcel. RMC §17.40.050. The Riverton Zoning Code also provides for zoning districts for agriculture and airport zones. The City of Riverton has also adopted a master plan for the City under the authority of W.S. §15-1-501. The master plan governs the current physical layout of the City and also controls the orderly growth of the City.

While Fremont County does not have a zoning code, the authority to adopt one is granted in W.S. §18-5-201 et seq. Under that authority Fremont County has adopted an extensive system for planning and approving subdivisions in accordance with W.S. §18-5-301 et seq., and has promulgated its own subdivision regulations.

The Tribes have similarly sought to enact zoning and planning on the Reservation in the S&A LOC. The Tribes' authority to enact zoning laws and to conduct planning was recognized in Brendale v. Confederated Tribes and Bands of the Yakima Indian Nation, 492 U.S. 408 (1989).

The Tribes have encompassed their zoning code in §11-5-1 et seq. of the S&A LOC. Section 11-5-3 of the S&A LOC provides that “This code shall apply to all lands within the exterior boundaries of the Wind River Reservation, whether held in trust by the United States for the benefit of the individual Indians, or for the Shoshone and Arapaho Tribes or held in fee by Indians or non-Indians.” In contrast to the RMC, the S&A LOC provides for only one residential zone, and the only allowable structures in a residential zone are a single family dwelling or outbuilding used in connection with a family dwelling, a school, a church or housing for a commercial convenience. Therefore, many current and proposed future uses of lands within the City of Riverton and in the ceded area of Fremont County would not be allowable uses under the S&A LOC.

The status quo since 1905 has been that the City of Riverton and Fremont County have conducted and implemented zoning and planning laws in the ceded area. Based upon those laws, inhabitants of the area have developed their properties and have planned for future development of their lands. If the ceded

lands were now determined to be a part of the Reservation, the zoning would then fall under the S&A LOC, which would disallow certain current uses of the lands in the ceded area and there is no current planning enacted on the Reservation, which may result in unfettered subdivision of lands without any governmental oversight.

IV. TRIBAL COURT AUTHORITY

Since 1905, civil cases arising in the ceded area have been under the authority of the Circuit Courts of Fremont County (previously County Courts) or the Ninth Judicial District Court, depending upon the dollar amount of the claim and the subject matter of the case. Criminal cases for Riverton Municipal Code violations were under the authority of the Riverton Municipal Court and violations of state statutes (not adopted by the City of Riverton by reference) were under the authority of the Circuit Courts or the Ninth Judicial District Court, depending on the classification of the offense.

Pursuant to §1-2-2 of the S&A LOC, the jurisdiction of the Tribal Courts of the Shoshone and Arapaho Tribes shall extend to the territory within the Reservation. The Tribal Court claims personal jurisdiction over any person residing, located or present within the Reservation for any civil action, any person who transacts, conducts, or performs any business activity within the Reservation for any civil action, any person who owns, uses or possesses any property within

the Reservation for any civil cause of action, and any person who commits tortious conduct within the Reservation for any civil action arising from the act, conduct or omission. S&A LOC §1-2-3(2). The Tribal Court also claims jurisdiction over any property, real or personal, located on the Reservation (S&A LOC §1-2-4), and any civil cause of action arising on the Reservation (S&A LOC §1-2-5). The jurisdiction is stated to be concurrent with any other court having valid jurisdiction, but further provides that this Code does not recognize, grant, or cede any jurisdiction to any other governmental entity in which jurisdiction does not otherwise exist in law. (S&A LOC §1-2-6). The judges of the Tribal Court are appointed by the Joint Business Council (an entity whose existence has been dissolved by the Arapaho Tribe, but which the Shoshone Tribe has not recognized as being dissolved). (S&A LOC §§1-3-2 and 1-3-3).

If the status quo over the ceded areas of land was disrupted, and these areas were held to be within the Reservation, it would place the legal jurisdiction for many civil cases in a state of confusion.

A. Forcible Entry and Detainer Actions

Currently an action for Forcible Entry and Detainer for lands located within the ceded area is under the jurisdiction of the Ninth Judicial District Circuit Court. W.S. §1-21-1001. Under §1-2-4 of the S&A LOC, the Tribal Court would have

jurisdiction over the rights in property on the WRIR. Additionally, pursuant to S&A LOC §12-2-1 et seq., the Tribal Court has jurisdiction over evictions on the Reservation, even if the parties are non-Indians. If the ceded area were determined to be a part of the WRIR, it would create a system whereby the Tribal Court had jurisdiction over all such matters, rather than the Circuit Court.

B. Probate Court Matters

Pursuant to W.S. §2-2-101, the District Courts of the State have exclusive jurisdiction of all matters relating to probate and of the property and claims involved in the probate action. This has been the status quo in the ceded area. Section 5-1-1(2) of the S&A LOC, provides that the Tribal Court shall have original jurisdiction of matters related to probate where all real and personal property is involved, within or affecting the WRIR.

The effect of a determination that the 1905 Act did not diminish the Reservation would completely alter jurisdiction over probate matters where the decedent owned property in the City of Riverton or in the ceded area of Fremont County. Currently these matters are filed in and administered by the Ninth Judicial District Court, Fremont County, Wyoming. CTY-WR-000042 ¶¶ 3-4. If the determination is made that the 1905 Act did not diminish the Reservation, estates and probate matters would be administered by the Tribal Court. According to the

S&A LOC, this would result in a non-Indian who purchased land in the City of Riverton or in Fremont County in the ceded areas, and with no connection to the Reservation, having their estate probated in Tribal Court. This would wholly disrupt the status quo.

There are also potential different heirships in the Tribal Court as opposed to the District Court. In the District Court if there are no heirs then the property of the estate escheats to the State of Wyoming. W.S. §2-4-105(b). Under §5-3-6 of the S&A LOC, if there are no heirs under the provision of the Code, the intestate estate escheats to the Shoshone and Arapaho Tribes. Therefore, it is possible for a non-Indian person with no previous contacts to the Reservation to have his estate divided between the two Tribes if the ceded area is deemed to be a part of the Reservation.

C. Creditors' Rights

Creditors' rights in the ceded area are currently administered under the laws of the State of Wyoming. Under Wyoming Statutes, the method and manner of foreclosure are pursuant to W.S. §1-18-101 et seq., and include such features as allowing foreclosure of mortgages by a power of sale (W.S. §34-4-102), the manner and method of the sales (W.S. §1-18-101), and redemption periods of three months, except in the case of agricultural lands, which are 12 months. W.S. §1-18-

103. Repossessions of personal property are controlled by the Uniform Commercial Code as contained in W.S. §34.1-9-601 et seq. Included in the rights of creditors is the right of self-help repossession if the same may be accomplished without a breach of the peace. W.S. §34.1-9-609. CTY-WR-000038-41¶ 5.

The S&A LOC provisions for repossession and foreclosure are inconsistent with the Wyoming Statutes. S&A LOC §14-15-1 et seq. One glaring difference is that there are no self-help remedies in the LOC, and power-of-sale provisions are not recognized. Actions to repossess personal property and to foreclose a mortgage are initiated by filing a complaint in the Tribal Court. S&A LOC §14-15-1(3) and (4). The redemption period for all foreclosed real property is six months. S&A LOC §14-15-1(9)(b).

The status quo to the present date has been that actions to foreclose mortgages and repossess personal property in the ceded area have been conducted under State laws. Lenders have loaned money partly on the basis that they were aware of their remedies if there was a default. Debtors have borrowed money on the basis of redemption periods and procedures as set forth by the laws of the State. A determination that the ceded lands were not diminished would affect the rights of both creditors and debtors and also alter the ability and willingness of financial

institutions to give loans where the property is suddenly located on the Reservation.

D. Traffic Law Enforcement

Currently, a person operating a motor vehicle on the streets of the City and in the ceded area of Fremont County is subject to the laws of the State of Wyoming and the City of Riverton, if in the City limits. Any violation of those laws is enforced by the City of Riverton Police Department, the Fremont County Sheriff's Office, or the Wyoming Highway Patrol. If a citation is issued, the matter is administered in the City of Riverton Municipal Court or the Fremont County Circuit Court. If the motorist forfeits a fine on the matter or is found guilty, the fine is paid to either the City or Fremont County, depending on the Court having jurisdiction. CTY-WR-000043-44 ¶¶ 4-5.

The Tribes have created a Traffic Code under Title VIII of the S&A LOC. It provides that the Code applies to all persons operating a motor vehicle within the WRIR, that violation is not a misdemeanor (except for certain specified offenses) and thus not a criminal matter (S&A LOC §8-1-2) and that all fines are to be paid to the Tribes' general fund (LOC §8-1-3). One such stated offense in the LOC is speeding. Currently if a person speeds on a City street or on a County road, they are issued a citation by a Riverton Police Officer or a County Deputy Sheriff, cited

into Municipal or Circuit Court, and the fine is payable to that court. CTY-WR-000043-44¶¶ 4-5. If the ceded area is determined to be within the WRIR, then it is uncertain who would issue the citation. If a citation is issued by the Bureau of Indian Affairs Police or a Tribal Police officer, then the matter would proceed through the Tribal Court and fines would be paid to the Tribes. If jurisdiction were altered, issues would arise as to whether the BIA or Tribal Police have sufficient officers to safely enforce traffic regulations in Riverton. CTY-WR-000043-44¶¶ 6- 8.

V. BUILDING CODES

Riverton has adopted various building codes which must be adhered to in the construction of buildings located within the City. Generally, the City's building codes are based upon the Uniform Electric Code, Uniform Mechanical Code, and Uniform Plumbing Code, each with certain exceptions. The status quo has been that persons having structures built for them could rely upon these building codes and that the City would require contractors to erect structures in conformity therewith, thereby giving the owner a measure of comfort as to the safety and soundness of the structures. CTY-WR-000045-46¶¶ 3-4.

The Tribes, in Title XIII, S&A LOC, have set forth a General Building Code for structures that are constructed on the WRIR. In contrast to the City's Code

system, the LOC Building Code is lacking in specifics, even by reference. An example is the Plumbing Code set out in the LOC that sets forth some piping requirements, but is lacking in any other specifics of plumbing. (See Title XIII, Chapter 4, LOC).

The status quo is that persons constructing homes in the City have assurance that the quality of the building being erected will generally meet basic requirements. CTY-WR-000045-46 ¶ 3 & 4. However, if the ceded land is determined to be part of the Reservation, the LOC Building Code will then govern, and such assurances will be lacking.

VI. ENVIRONMENTAL ENFORCEMENT

Currently the City and the ceded area in Fremont County are subject to the Wyoming Department of Environmental Quality (WDEQ). All water, air quality, land quality, and solid waste disposal issues are regulated by the WDEQ and have been so regulated by that entity since its inception without objection or attempted regulation by the Tribes or the United States Environmental Protection Agency. Title 35, Chapter 11 of the Wyoming Statutes creates the WDEQ and sets forth the rules and regulatory authority for environmental issues and regulations in the State. W.S. §35-11-101 et seq. These rules have governed the activities within the City

and in the ceded lands since the WDEQ was created in 1973. In contrast, Tribal and Federal governments regulate water within the diminished area of the WRIR.

Riverton has a wastewater treatment facility that the WDEQ regulates. The regulation includes the transmission lines of wastewater from the source to the treatment facility, matters that are deposited into the treatment facility discharge from the treatment facility into the Wind River. Since regulation was taken over by the WDEQ, neither the United States Environmental Protection Agency (EPA) nor either tribe has regulated or attempted to regulate any matters of sewer transportation, treatment or discharge in the City of Riverton. CTY-WR-000001-35 ¶ 6.

Both the City of Riverton and Fremont County have sources of water for domestic and agricultural use. Each entity has been required to obtain a WDEQ permit for use of the water. The quality of the water delivered for consumption is regulated by the WDEQ. The City of Riverton has a water treatment facility that is permitted by, and must meet, the regulatory standards set by the WDEQ. Neither the EPA nor either Tribes have ever asserted any authority or regulation over water supplied to residents living in the City of Riverton or the ceded area. CTY-WR-000001-35 ¶ 5, CTY-WR-000047 ¶ 4.

The WDEQ must delegate small wastewater system regulation to local authorities upon their request, pursuant to W.S. §35-11-304. Fremont County has been delegated that power since 1976, and has exercised small wastewater permitting and regulatory authority within the ceded area since that time, including promulgation and enforcement of small wastewater rules, with no objection from the Tribes or the United States. CTY-WR-000056 ¶ 3; CTY-WR-000048-55.

The WDEQ is also charged with regulation of Solid Waste Management in the State of Wyoming. In 1979, Fremont County, under the authority granted in W.S. §18-11-101 et. seq., established the Fremont County Solid Waste Disposal District. The District encompasses Fremont County, Wyoming and was charged with closing unregulated landfills in Fremont County and establishing regulated landfills in the County. The District has created landfills and transfer stations to handle the disposition of solid waste in the county. All of the activities have been under the regulation of the WDEQ and neither the EPA nor either tribe has sought to exercise any control over solid waste issues in the county.

The District operates transfer stations at Crowheart, Fort Washakie, Ethete and on 17 Mile Road near Arapahoe. All of these sites are on the diminished Reservation. The District also operates transfer stations in the Town of Pavillion and The City of Riverton. In 2012 the Tribes and the District entered into a

contract for the Tribes to operate the transfer stations at Crowheart, Fort Washakie, Ethete and 17 Mile Road. Conspicuously absent from the agreement were the transfer stations in the Town of Pavillion and City of Riverton. These two sites are located in the ceded area, and the Tribes did not seek to assume control over them as they had the transfer stations on the diminished Reservation. *See* CTY-WR-000057-62.

VII. LAW ENFORCEMENT

From 1905 to the present, law enforcement in the ceded area has been handled by the City of Riverton Police Department and the Fremont County Sheriff's Office. Disposition of the cases arising in the ceded area have been adjudicated in the Riverton Municipal Court for municipal violations and in the Fremont County Circuit Court and Ninth Judicial District for other matters. CTY-WR-000043-44 ¶¶ 4-5. Such enforcement and adjudication was accomplished under the authority of the State of Wyoming, irrespective of the ethnicity of the Defendant. As noted in the State's Brief, it has been held in numerous cases that crimes committed by Indian Defendants in the City of Riverton are subject to the jurisdiction of the State of Wyoming. *E.g.*, Wyoming v. Moss, 471 P. 33 (Wyo. 1970), YellowBear v. State, 174 P.3d 1270 (Wyo. 2008) and Yellowbear v.

Attorney General of State of Wyoming, 380 Fed. Appx. 740, 2010 WL 2053516 (10th Cir. 2010).

If the City of Riverton and the ceded lands are now determined to be on the WRIR, it will disrupt and overturn longstanding precedents set in Wyoming and will also materially affect the enforcement and adjudication of cases. The Indian Major Crimes Act, 18 U.S.C. §1151, grants to the United States the exclusive jurisdiction to prosecute Indians for major crimes in “Indian Country.” Neither the City of Riverton Police Department nor the Fremont County Sheriff’s Office has jurisdiction to effect arrests of Indians on the WRIR. A ruling that the 1905 Act did not diminish the Reservation would have a debilitating effect on law enforcement. If an Indian were to commit an offense in the ceded lands, including the City of Riverton, then neither the City nor the County law enforcement could arrest the individual and, in fact, could not even issue a citation, as traffic offenses would also be prosecuted in Tribal Court. This would leave the officer in a quandary to determine first, if the offender were an Indian, and next, what verification would be needed to make that determination. If the suspect were determined to be an Indian, then the officer would have to sit with the offender until an officer authorized to enforce the law on the Reservation could reach the site of the offense. This would also lead to unlawful arrest allegations if the officer

were to err in the identification of the person and that person was then wrongfully detained in the County jail or in Tribal jail.

The status quo, affirmed by the Wyoming Supreme Court on several occasions, is that the ceded area, including the City of Riverton, is not within the Reservation. City, County, State, Tribal and Federal law enforcement have recognized this and operated within their own jurisdictional boundaries. The place of adjudication has been determined accordingly. To now rule otherwise would throw law enforcement and the public into a state of confusion as to the proper method to dispose of even the most minor offenses such as speeding.

CONCLUSION

Any reasonable investigation of the facts would have revealed that the City of Riverton and the rest of the ceded, unrestored land have not been treated as reservation lands since 1905. Yet, none of the indisputable evidence of that fact turned up in EPA's woefully inadequate investigation.

Longstanding reliance by the State, County, and City of Riverton and their citizens weighs strongly against EPA's erroneous decision to upset the jurisdictional status quo. Such a ruling would affect the State, County, and City's jurisdiction over their citizens, within an area in which they have previously

exercised their right of dominion. Osage Nation v. Oklahoma Tax Commission, 2009 WL 204194 (N.D. Okla.). The longstanding assumption of jurisdiction by the State, County, and City over an area mainly populated by non-Indians (EPA-WR-004216 at 2) creates justifiable expectations of the people living in the area. Rosebud Sioux Tribe v. Kneip, 430 U.S. 584, 604-605, (1977); *accord* Hagen v. Utah, 510 U.S. 399, 421, (1994).

Reestablishment of Tribal sovereign control over the ceded area would have disruptive practical consequences. City of Sherrill, N.Y. v. Oneida Indian Nation of New York, 544 U.S. 197, at 216 (2005). A checkerboard of alternating state and tribal jurisdiction would seriously burden the administration of state and local governments. Hagen, at 421.

If the status of the ceded area were to revert back to reservation land, after over a century of being treated otherwise, the status quo would be severely and negatively altered. Jurisdictional issues in criminal, civil, and administrative matters would arise, and Tribal Court authority would greatly expand to encompass non-Indians in many types of matters. The rights and remedies of both Indians and non-Indians within the ceded area would materially alter.

The County and City Intervenors therefore respectfully request that the Court vacate the EPA's erroneous decision, apply the plain language of cession

Congress used to express its intent in 1905, and hold that the 1905 Act diminished the WRIR. Such relief will preserve the status quo Congress created more than a century ago.

STATEMENT REGARDING ORAL ARGUMENT

This case requires the Court to review EPA's adjudication of the respective sovereign authorities of Wyoming and the Tribes. Because of the paramount importance of this issue, the County and City Intervenors respectfully request that the Court hold oral argument in this matter.

SUBMITTED this 29th day of December, 2014.

s/ Jodi A. Darrough
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*Attorney for Intervenor
the City of Riverton, Wyoming*

CERTIFICATE OF DIGITAL SUBMISSION

I hereby certify that the digital submission of the foregoing *City & County Intervenors' Opening Brief* has been scanned for viruses with the most recent version of a commercial virus scanning program, Symantec Endpoint Protection, Version 12/1.671.4791, with weekly definitions update and scanned nightly, and according to the program, is free of viruses. I additionally certify that all required privacy redactions have been made, and that the ECF submission of this document is an exact replica of the hard copies submitted to the Court.

s/ Jodi A. Darrough
Deputy Fremont County Attorney

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

I hereby certify that this brief complies with the type-volume limitation in the Court's July 8, 2014 Order, and any subsequent Orders, as this Brief is comprised of 4,998 words, excluding the portions of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2007, in 14 point Times New Roman font.

s/ Jodi A. Darrough
Deputy Fremont County Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of January, 2015, a true and correct copy of the foregoing *City & County Intervenors' Opening Brief*, as well as Wyoming's Rule 28(f) Addendum and Supplemental Record Addendum, as submitted in digital form via the Court's ECF system, and were served by the Clerk of Court through the Court's CM/ECF system on all attorneys of record.

s/ Jodi A. Darrough
Deputy Fremont County Attorney

INDEX TO ADDENDUM

Bates Number	Document Title
CTY-WR-000001-35	Addendum 1: Affidavit of Courtney V. Bohlender
CTY-WR-000036-37	Addendum 2: Affidavit of Becky Enos
CTY-WR-000038-41	Addendum 3: Affidavit of Patricia O'Brien Arp
CTY-WR-000042	Addendum 4: Affidavit of William Miller
CTY-WR-000043-44	Addendum 5: Affidavit of Mike Broadhead
CTY-WR-000045-46	Addendum 6: Affidavit of Sandy Luers
CTY-WR-000047	Addendum 7: Affidavit of Kyle Butterfield
CTY-WR-000048-55	Addendum 8: Small Wastewater DEQ Delegation Agreement
CTY-WR-000056	Addendum 9: Affidavit of Marcel Lopez
CTY-WR-000057-62	Addendum 10: Transfer Station Operating Agreement

AFFIDAVIT OF COURTNEY V. BOHLENDER

- 1) My name is Courtney V. Bohlender, and I am the City Clerk/Director of Administrative Services for the City of Riverton, Wyoming. I am over the age of eighteen and have held that position for over 7 years. My business address is City of Riverton, 816 North Federal Boulevard, Riverton, Wyoming 82501.

- 2) As the City Clerk/Director of Administrative Services, my duties include but are not limited to keeping the records, both historical and financial, for the City of Riverton, attending city council meetings, keeping record of all ordinances passed, and issuing licenses authorized by the city code.

- 3) A portion of my duties includes the issuance of liquor licenses upon approval by the Riverton City Council. As the custodian of public records, I have located records dating back to the original incorporation in 1906. I also located an original receipt book indicating in writing the receipt of \$300 in "county liquor sales" from an individual. Therefore, to my knowledge, it appears the City of Riverton issued its first liquor license on December 11, 1907. The City of Riverton currently has 32 liquor licenses that have been issued by the City of Riverton under the authority of the State of Wyoming.

- 4) Pursuant to W.S. 12-4-106 a liquor license is valid for a term of one year and each year the City Council holds a public hearing on renewal of the issued liquor licenses. I have attended the public hearings regarding liquor license issuance or renewal during my tenure as the City Clerk/Director of Administrative Services. During that time the Eastern Shoshone Tribe, the Northern Arapahoe Tribe, nor the Federal Government has ever appeared at a public hearing on liquor licenses to contest the issuance or renewal of a liquor license. I have also upon request and on occasion reviewed the City records prior to my tenure and have not reviewed any

minutes pursuant to public hearings on the issuance or renewal where the Eastern Shoshone Tribe, the Northern Arapahoe Tribe, or the Federal Government has ever appeared at a public hearing to contest the issuance or renewal of a liquor license.

5) The City of Riverton currently employs 118 employees. The City of Riverton has annual revenue of approximately \$21,000,000. To my knowledge, neither the Eastern Shoshone Tribe nor the Northern Arapaho Tribe has ever requested that the City of Riverton comply with the preference provisions contained in the TERO of the Shoshone and Arapaho Law and Order Code, nor have they ever requested we obtain a tribal business license or pay a TERO fee.

6) The City of Riverton operates a waste water system and treatment plant. The City of Riverton has numerous water wells and a water treatment plant. The permits for the waste water treatment plant and the water treatment plant are issued by the Wyoming Department of Environmental Quality. Attached to this Affidavit are copies of the permits issued by the Wyoming Department of Environmental Quality.

FURTHERMORE THE AFFIANT SAYETH NOT.

DATED this 15 day of December, 2014.

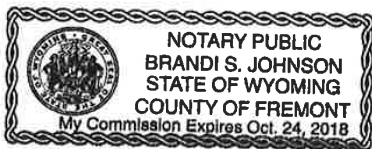
Courtney V. Bohlender
Courtney V. Bohlender

STATE OF WYOMING)
)SS.
COUNTY OF FREMONT)

Subscribed and sworn to before me this 15th day of December, 2014 by Courtney V. Bohlender.

Witness my hand and official seal.

Brandi S. Johnson
Notary Public
My commission expires: 10/24/18



Wyoming Department of Environmental Quality
Water Quality Division
WYPDES (Wyoming Pollutant Discharge Elimination System) Program

STATEMENT OF BASIS

RENEWAL

APPLICANT NAME: Riverton, City of

MAILING ADDRESS: 816 North Federal Blvd.
Riverton, WY 82501

FACILITY LOCATION: City of Riverton WWTP, which is located in SWNW Section 36,
Township 1N, Range 4E, Fremont County. The effluent will be
discharged to the Wind River (class 2AB).

Latitude: 43.0197777
Longitude: -108.3587222

PERMIT NUMBER: WY0020672

This permit has been renewed in accordance with current WYPDES permitting requirements. All permit effluent limits and monitoring requirements have been updated in accordance with current WDEQ regulations and policy. Specific changes to the permit include the following:

1. *Effluent water temperature (°C) monitoring has been added to this permit.*
2. *A downstream monitoring point has been added to this permit for the collection of pH and Temperature (°C).*
3. *The flow limits and flows used in the wasteload allocation were all updated to the current treatment capability of the facility of 4.95 MGD.*
4. *Due to the low effluent to receiving water dilution using the mixing zone requirements of default 10% of 7Q10 of available dilution from the receiving stream and based upon Chapter 2, Wyoming Water Quality Rules and Regulations; the whole effluent toxicity monitoring is upgraded from Acute analysis to Chronic analysis.*

Facility Description

The wastewater facility that services the City of Riverton is a secondary treatment plant that includes an oxidation ditch that is, by in-design tertiary treatment, with extended aeration for nitrification. Mixed Liquor Suspended Solids from the oxidation ditch travel through a final clarifier where the water and solids are separated and then the final effluent (water) is treated with ultraviolet light (UV) disinfection and discharged into the Wind River (class 2AB), just below the confluence of the Wind River and the Little Wind River (class 2AB). During the summer months a portion of the effluent is reused by watering the wastewater treatment facility grounds and area ball fields.

The influent headworks includes coarse screening and degritting. Final sludge product is first partially digested with aerobic digestion followed by mechanical dewatering with the dried sludge product being composted. The facility has side streams from the various treatment processes that are returned through the headworks and treated.

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This facility also contains a generator that is automatically transferred in the event of normal power outages. It accepts truck hauled waste from area septage haulers and contains a full laboratory as the majority of the self monitoring at this facility is conducted on site by plant personnel. This treatment works is considered a major discharger with consistently greater than 1.0 MGD in effluent flows.

The produced water is immediately discharged to a class 2AB perennial water of the state. The permit establishes effluent limits for the end of pipe, which are protective of all the designated uses defined in *Chapter 1 of Wyoming Water Quality Rules and Regulations*. This may include drinking water, game and non-game fish, fish consumption, aquatic life other than fish, recreation, agriculture, wildlife, industry and scenic value.

Effluent Limits:

In developing effluent limits, all federal and state regulations and standards have been considered and the most stringent requirements incorporated into the permit. Permit limits are technology-based and water-quality based, as described below.

1. **Technology based limits:** The permit requires immediate compliance with National Secondary Treatment Standards, Wyoming Water Quality Standards, and the effluent limits that are established by this permit.
 - a. The five-day biochemical oxygen demand (BOD₅) concentration shall not exceed 30 mg/L (monthly average) or 45 mg/L (weekly average) or 90 mg/L (daily maximum). The facility must maintain a 85% percent or greater removal of BOD. These limits are based upon National Secondary Treatment Standards.
 - b. The Total Suspended Solids (TSS) concentration shall not exceed 30 mg/L (monthly average) or 45 mg/L (weekly average) or 90 mg/L (daily maximum). The facility must maintain a 85% percent or greater removal of TSS. These limits are also based upon National Secondary Treatment Standards.
2. **Water quality based limits:** Water-quality-based limits are set to ensure that the quality of the receiving water is protected. Expected contaminants in municipal wastewater include **E. coli, ammonia, and total residual chlorine.**
 - a. The permit requires that the pH must remain within 6.5 and 9.0 standard units. The pH limit is based on water quality standards established in the *Wyoming Water Quality Rules and Regulations, Chapter 1*.
 - b. **Mixing zone:** This permit sets water quality based effluent limits so that mixing zone requirements, per *Chapter 1, Section 9, Wyoming Water Quality Rules and Regulations* are met for total residual chlorine and total ammonia. Mixing zone requirements ensure that a minimal area of the water body is impacted by the discharge during mixing of the discharge and receiving water. Mixing-zone-based effluent limits for this permit are calculated from a mass balance equation 10% dilution as a result of this facilities use of the default mixing zone requirement. A summary of the mixing zone compliance specific to this permit is as follows:
 - c. **Wasteload allocation:** For this facility, which discharges to perennial water, a wasteload allocation calculation is performed to determine the effluent limits for E. coli, ammonia, and residual chlorine, which are in part determined by dilution provided by the receiving water. This involves a mass balance approach to determine the maximum allowable concentration in the effluent at the end-of-pipe, so that when mixed with the receiving stream, the in-stream standard of the constituent is not violated. The wasteload allocation, with the mass balance approach, utilizes 1) the upstream flow of the receiving stream, 2) the upstream concentration of the constituent 3) the maximum monthly average design discharge volume, and 4) the instream standard concentration, to calculate

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the 5) maximum allowable concentration of the constituent in the effluent. Also refer to **Table A** in the Statement-of-Basis, for wasteload allocation information.

1) THE UPSTREAM FLOW OF THE RECEIVING STREAM: The low flow conditions of the receiving water must be considered. The low flow conditions can be determined by applying the 7Q10 (the minimum seven consecutive day flow that has the probability of occurring once in ten years) of the receiving water body. Using the 7Q10 values to establish the effluent limits will provide a margin of safety because “worse case” flow conditions are assumed. A U.S.G.S. monitoring station that is above the wastewater treatment plant can provide this information. The following stations were selected, shown below. Also shown are the 7Q10 values that will be used to establish the effluent limits listed above.

U.S.G.S. Station Number	Station Name	Period of Flow Records	April-September 7Q10 Value, cfs	October-March season 7Q10 Value, cfs
06228000	Wind River at Riverton, WY	1912-2012	11.97	51.43
06235500	Little Wind River at Riverton, WY	1941-2012	18.28	38.86
ADD TOGETHER because discharge is just below the confluence of the two rivers.	N/A	N/A	30.25	90.29
USE 10% (default) to be Compliant with Mixing Zone Requirements	N/A	N/A	3.03¹	9.03¹

The 7Q10 low flow values were calculated using Microsoft Excel™.

¹These values were used in the wasteload allocation.

2) THE UPSTREAM CONCENTRATION OF THE CONSTITUENT

Background Constituent	Instream Concentration				Number of Observations	Period of Record
	April-September season	October-March season	May-September season	October-April season		
E. Coli, Average, colonies/100 mL	N/A	N/A	N/A	N/A	Default is 50	N/A
Ammonia, average, mg/L	N/A	N/A	N/A	N/A	Default is 0.1	N/A
Chlorine, mg/L	0	0	0	0	Default is Zero	N/A

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					Background	
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3) THE MAXIMUM MONTHLY AVERAGE DESIGN DISCHARGE VOLUME

The expected discharge for the treatment facility is 4.95 million gallons per day (MGD), which is used in the wasteload allocation. Because this value is used in the wasteload allocation equation, the permit also includes a flow limit of 4.95 MGD, monthly average.

4) THE INSTREAM STANDARD CONCENTRATION E. COLI

E. coli Bacteria Standards, In Waters Designated for Primary Contact Recreation			
April through September			October through March
Monthly Average Standard	Daily Maximum Standards	Criteria	Monthly Average and Daily Maximum
126 colonies/100 mL	236 colonies/100 mL	High Use Swimming Areas	630 colonies/100 mL
	298 colonies/100 mL	Moderate Fully Body Contact	
	410 colonies/100 mL	Lightly Used Full Body Contact	
	576 colonies/100 mL	Infrequently Used Full Body Contact	

Source: Chapter 1, Wyoming Water Quality Rules and Regulations

The standard applied reflects “infrequently used full body contact” recreation during the months April 1 through September 30 (summer recreation season), 576 colonies/100 mL. The background E. coli value is based on default values. See also Table A, page 7, Statement of Basis for more information.

AMMONIA

	Background	Instream	Concentration			Number of Observations	Period of Record
	Constituent	April-September season	October- March season	May-September season	October -April season		
Receiving water	pH, median	7.9	8.0	N/A	N/A	N/A	N/A
	Temperature, Maximum, °C	15.3	6.43	50	50	Default is 50	N/A

Aquatic Life Standard for Ammonia, Site Specific				
Season	Receiving Water pH	Receiving Water Temp (C°)	Instream Chronic Ammonia Standard (mg/L)	Instream Acute Ammonia Standard (mg/L)
April-Sept	7.9	15.3	2.54	6.77
Oct-May	8.0	6.43	2.43	5.62

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5) MAXIMUM ALLOWABLE CONCENTRATION OF THE CONSTITUENT IN THE EFFLUENT. This is a value calculated using the above information. See tables below, and wasteload allocation spreadsheet (Table A) on page 7 of the Statement-of-Basis.

d. TABLES INDICATING WATER QUALITY BASED EFFLUENT LIMITS

E. coli Effluent Limits							
Season	7Q10 (cfs)	Max Monthly Average Effluent Discharge (MGD)	Instream Standard, E. coli, monthly avg. (colonies/100 mL)	Instream Standard, E. coli, daily max. (colonies/100 mL)	Background E. coli (colonies/100 mL)	Calculated Effluent Limit, E. coli, Monthly Avg, Colonies/100 mL	Calculated Effluent Limit, E. coli, Daily Max, Colonies/100 mL
April-Sept	3.02	4.95	126	576	50	156	858
Oct-March	9.03	4.95	630	630	50	1195	1312

AMMONIA LIMITS									
Season	7Q10 (cfs)	Max Effluent Discharge (MGD)	Combined pH	Combined Temp (C°)	Back-ground Ammonia (mg/L)	Instream Chronic Ammonia Standard (mg/L)	Instream Acute Ammonia Standard (mg/L)	Calculated Effluent Limit (based on acute standard), Ammonia (mg/L)	Calculated Effluent Limit (based on chronic standard), Ammonia (mg/L)
April-Sept	3.02	4.95	7.9	15.3	0.1	2.54	6.77	9.39	3.50
Oct-March	9.03	4.95	8.0	6.43	0.1	2.43	5.62	12.12	5.17

Effluent Limits For Total Ammonia: For total ammonia as N, the background ammonia concentration, pH, and temperature were estimated using U.S.G.S. monitoring station numbers 06228000 (Wind River at Riverton, WY) and 06235500 (Little Wind River at Riverton, WY). The period of record for this station is from 1912-2012 for the Wind River and 1941-2012 for the Little Wind River station. The chronic and acute standards for ammonia are as per *Chapter 1, Wyoming Rules and Regulations, Appendix C*. The resulting wasteload allocation calculation determined the effluent limits based on the chronic and acute standard, as shown in Table A. The more stringent effluent limit is based on the calculations using the chronic standard.

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TOTAL RESIDUAL CHLORINE LIMITS							
Season	7Q10 (cfs)	Max Effluent Discharge (MGD)	Instream Standard, Total Residual Chlorine, chronic (mg/L)	Instream Standard, Total Residual Chlorine, acute (mg/L)	Background Concentration, Total Residual Chlorine, acute (mg/L)	Calculated Effluent Limit, (based on acute standard), mg/L	Calculated Effluent Limit, (based on chronic standard), mg/L
April-Sept	3.02	4.95	0.011	0.019	0.0	0.03	0.02
Oct-March	9.02	4.95	0.011	0.019	0.0	0.04	0.02

Effluent Limits For Total Residual Chlorine: For total residual chlorine, the upstream concentration is estimated at zero, a default value. The chronic instream standard for total residual chlorine is 0.011 mg/L, and the acute instream standard is 0.019 mg/L. The resulting wasteload allocation calculation determined the effluent limits based on the chronic and acute standard, as shown in Table A. The more stringent effluent limit is based on the calculations using the chronic standard.

ANTIDegradation, IMPAIRMENT REVIEW: The discharge of wastewater and the effluent limits that are established in this permit have been reviewed to ensure that the levels of water quality necessary to protect the designated uses of the receiving waters are maintained and protected. An antidegradation review has been conducted and verifies that the permit conditions, including the effluent limitations established, provide a level of protection to the receiving water consistent with the antidegradation provisions of Wyoming surface water quality standards. DEQ reviewed the 303(d) list to determine the status of the receiving water as a waterbody that cannot support designated uses. The evaluation has revealed that the Wind River (class 2AB) and the Little Wind River (class 2AB) are not included on the 303(d) list as not supporting designated uses.

PERCENT REMOVAL REQUIREMENTS: The arithmetic mean of the BOD and TSS concentrations for effluent samples collected in a period of 30-day average shall demonstrate a minimum of eighty-five percent (85%) removal of BOD and eighty-five percent (85%) of TSS, as measured by dividing the respective differences between the mean influent (prior to treatment) and effluent concentrations for the calendar month (30-day average) by the respective mean influent concentration for the calendar month (30-day average), and multiplying the quotient by 100. See the below equation for clarification:

Percent Removal:

$$\left[\frac{\text{Influent} - \text{Effluent}}{\text{Influent}} \right] \times 100$$

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Table A

Wasteload Allocation (WLA) Calculations		Wasteload Allocation Formula:				10% of Stream Flow as Allowable Dilution			
Facility:	Permit Number:	Q _s	Q _d	Q _r	C _d = (Q _r C _r - Q _s C _s)/Q _d	C _r	C _s	C _d	
Season	Parameter	Low Flow, cfs (7Q10)	Low Flow, MGD (7Q10)	Discharge Rate, MGD	Combined Flow, MGD	Water Quality Standard	Background Con. (LA)	Limit (WLA)	
April-Sept	TRC, chronic	3.02	1.95	4.95	6.90	0.011	0	0.02	
Oct - March	TRC, chronic	9.03	5.82	4.95	10.77	0.011	0	0.02	
April-Sept	TRC, acute	3.02	1.95	4.95	6.90	0.019	0	0.03	
Oct - March	TRC, acute	9.03	5.82	4.95	10.77	0.019	0	0.04	
April - Sept	E.coli, #/100 ml Monthly Avg	3.02	1.95	4.95	6.90	126	50	155.91	
Oct - March	E.coli, #/100 ml Monthly Avg	9.03	5.82	4.95	10.77	576	50	1194.91	
April - Sept	E.coli, #/100 ml, Daily Max	3.02	1.95	4.95	6.90	630	50	858.24	
Oct - March	E.coli, #/100 ml, Daily Max	9.03	5.82	4.95	10.77	630	50	1312.45	
April-Sept	Ammonia, chronic	3.02	1.95	4.95	6.90	2.54	0.1	3.50	
Oct - March	Ammonia, chronic	9.03	5.82	4.95	10.77	2.43	0.1	5.17	
April-Sept	Ammonia, acute	3.02	1.95	4.95	6.90	6.77	0.1	9.39	
Oct - March	Ammonia, acute	9.03	5.82	4.95	10.77	5.62	0.1	12.12	
*All units are mg/l, unless otherwise specified.									
Effluent Limits Are Shaded, In Bold									

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DOWNSTREAM MONITORING POINT (DMP1): Ambient instream monitoring for pH and temperature two stream widths downstream from the confluence of the Wind River and the facility outfall shall be conducted monthly for the life of this permit. This is not to be considered a compliance point, but is to gather downstream water quality data to set future permit limits. See Part I, Section E.9 for the location of DMP1.

ADDITIONAL MONITORING REQUIREMENTS

Temperature in °C:

The facility is required to report effluent temperature two times weekly. There are no limits for Temperature (°C). The data is to be used to set future permit limits.

Whole Effluent Toxicity (WET) Testing:

Based upon *Chapter 2, Wyoming Water Quality Rules and Regulations*, the dilution factor in this case is less than 10:1, the permittee must pass chronic toxicity criteria for two species. In the chronic test the test organisms are exposed for a longer period of time and the effects on growth (fathead minnows) and reproduction (*Ceriodaphnia*) are measured. However, with the chronic test, pass or failure is determined under low stream flow dilution condition. In this case the low stream flow dilution is 72% effluent¹, so the chronic test criteria must be met in a test solution containing 72% effluent and 28% control water for the summer season. For the winter season the chronic test criteria must be met in a test solution containing 46% effluent and 54% control water. Control water may be either water from the receiving stream or laboratory control water. Chronic testing and reporting is required quarterly.

¹ The calculation for the low stream flow and effluent dilution for WET test is as follows:

$$4.95 \text{ MGD} / (1.95 \text{ MGD stream low flow available for dilution} + 4.95 \text{ MGD design flow})$$

$$\text{The above division equals } 4.95 \text{ MGD} / 6.9 \text{ MGD design flow} + \text{ low stream flow} = 0.717$$

Converting 0.717 to a percentage = 71.7% effluent (April through September).

For the winter season (October through March)

$$4.95 \text{ MGD} / (5.82 \text{ MGD stream low flow} + 4.95 \text{ MGD design flow})$$

The above division equals $4.95 \text{ MGD} / 10.77 \text{ MGD} = 45.96 \% \text{ effluent (46\%)}$.

During the previous permit monitoring schedule, the permittee requested acute WET testing for one species (*Ceriodaphnia* or Fathead Minnows) on an alternating basis. As per Part I, Section B.3. of the previous permit, the DEQ granted the permittee's request because of five consecutive passing acute WET test results. With this permit issuance, the permittee will be required to test on both species per quarter. With five consecutive passing chronic WET tests, the permittee may again request testing for one species on an alternating basis.

Industrial Pretreatment Provisions: This permit contains the industrial pretreatment requirements of the U.S. Environmental Protection Agency (EPA); which is also administered by EPA. Those requirements are intended to ensure that industrial discharges to the plant do not cause an upset of the system or violation of the effluent limits that are established in the permit. See Part III, Section B of the permit for more information.

MAJOR DISCHARGE: This facility is classified as a "major" discharger per the U.S. Environmental Protection Agency. The permit will be submitted to the U.S. Environmental Protection Agency, Region 8 for review.

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Self-monitoring of effluent quality and quantity is required on a regular basis with reporting of results quarterly. The permit is scheduled to expire on **May 31, 2018**.

Marcia Porter
Water Quality Division
Department of Environmental Quality
Drafted: May 30, 2013

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AUTHORIZATION TO DISCHARGE UNDER THE
WYOMING POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the Federal Water Pollution Control Act, (hereinafter referred to as "the Act"), and the Wyoming Environmental Quality Act,

Riverton, City of

is authorized to discharge from the City of Riverton WWTP treatment facilities located in

SWNW Section 36, Township 1N, Range 4E, Fremont County

Latitude: 43.0197777

Longitude: -108.3587222

to receiving waters named

The Wind River (class 2AB)

in accordance with effluent limitations, monitoring requirements and other conditions set forth in Parts I, II and III hereof.

This permit renewal shall become effective on **June 1, 2013**.

This permit and the authorization to discharge shall expire **May 31, 2018** at midnight.



John F. Wagner, Administrator
Water Quality Division



Todd Parfitt, Director
Department of Environmental Quality

Date of Issuance May 20, 2013

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PART I

A. EFFLUENT LIMITATIONS - SEE ANY ADDITIONAL REQUIREMENTS UNDER PART III

Effective **June 1, 2013** and lasting through **May 31, 2018** the quality of effluent discharged by the permittee shall, at a minimum, meet the limitations set forth below. The permittee is authorized to discharge from outfall serial number(s) **001**.

1. Such discharges shall be limited as specified below:

Effluent Concentration

<u>Parameter</u>	<u>Monthly Average (b)</u>	<u>Weekly Average (b)</u>	<u>Daily Maximum (a) (b)</u>
Biochemical Oxygen Demand (BOD), mg/L	30	45	90
E. coli, colonies/100 mL, April-September	156	N/A	858
E. coli, colonies/100 mL, October-March	1195	N/A	1312
Flow, MGD	4.95	N/A	N/A
Total Suspended Solids, mg/L	30	45	90
Total Residual Chlorine (mg/L), January-December	N/A	N/A	0.02
Total Ammonia as N (mg/L), April-September	3.50	N/A	9.39
Total Ammonia as N (mg/L), October-March	5.17	N/A	12.12
pH, s.u. (c)	N/A	N/A	6.5-9.0
Biochemical Oxygen Demand (BOD), % Removal (d)	85	N/A	N/A
Total Suspended Solids (TSS), % Removal (d)	85	N/A	N/A
Whole Effluent Toxicity (WET), Chronic, April through September, IC ₂₅ at 72% effluent.	N/A	N/A	Pass
Whole Effluent Toxicity (WET), Chronic, October through March, IC ₂₅ at 46% effluent.	N/A	N/A	Pass

- (a) Any single analysis and/or measurement beyond this limitation shall be considered a violation of the conditions of this permit.
- (b) Monthly Average, Weekly Average and Daily Maximum are defined in Part I.E.3.

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- (c) The pH shall not be less than 6.5 standard units nor greater than 9.0 standard units in any single grab sample.
- (d) Compliance with percent removal requirements is based on 30-day average sampling. More frequent sampling is optional. The arithmetic mean of the BOD and TSS concentration for effluent samples collected in a period of 30-day average shall demonstrate a minimum of eighty-five percent (85%) removal of BOD and TSS, as measured by dividing the respective differences between the mean influent and effluent concentrations for the calendar month by the respective mean influent concentration for the 30-day average, and multiplying the quotient by 100.

$$\left[\frac{\text{Influent} - \text{Effluent}}{\text{Influent}} \right] \times 100$$

There shall be no discharge of floating solids or visible foam in other than trace amounts, nor shall the discharge cause formation of a visible sheen or visible hydrocarbon deposits on the bottom or shoreline of the receiving water.

All waters shall be discharged in a manner to prevent erosion, scouring, or damage to stream banks, stream beds, ditches, or other waters of the state at the point of discharge. In addition, there shall be no deposition of substances in quantities which could result in significant aesthetic degradation, or degradation of habitat for aquatic life, plant life or wildlife; or which could adversely affect public water supplies or those intended for agricultural or industrial use.

B. SELF-MONITORING REQUIREMENTS

1. Routine monitoring End of Pipe-outfall 001

<u>Parameter</u>	<u>Frequency (a)</u>	<u>Sample Type (b)</u>
E. coli, colonies/100 mL	Twice-Weekly	Grab
pH, units	Twice-Weekly	Grab
Flow, MGD	Continuous	Daily Total (Report monthly average and daily maximum for the reporting month).
Total Residual Chlorine, mg/L (c)	Daily	Grab
Total Ammonia as N, mg/L	Twice-Weekly	24 hr. composite
BOD, mg/L, influent	Twice-Weekly	24 hr. composite
BOD, mg/L, effluent	Twice-Weekly	24 hr. composite
BOD, % Removal	Monthly	Calculate (d)
TSS, mg/L, influent	Twice-Weekly	24 hr. composite
TSS, mg/L, effluent	Twice-Weekly	24 hr. composite
TSS, mg/L, % removal	Monthly	Calculate (d)
Temperature, °C	Twice-Weekly	Grab

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<u>Parameter</u>	<u>Frequency (a)</u>	<u>Sample Type (b)</u>
WET, Chronic	Quarterly	24 hr. composite

Samples taken in compliance with the monitoring requirements specified above shall be taken at the outfall from the final treatment unit and prior to admixture with diluent water or the receiving stream.

- (a) If the discharge occurs on an intermittent basis, samples shall be collected during the period when that intermittent discharge occurs.
- (b) See "definitions" under the Monitoring and Reporting portion of this permit.
- (c) Monitor only if chlorine is used in the wastewater treatment process.
- (d) Calculate the percent reduction monthly average from the average of all monthly concentrations of raw influent and final effluent.

C. DOWNSTREAM MONITORING POINT (DMP1)

1. Effective **June 1, 2013** and lasting through **May 31, 2018**, the permittee shall monitor this Downstream Monitoring Point (DMP1) as shown below:

DMP1: Downstream sampling shall be taken 2 stream widths downstream from the confluence of the Wind River and the discharge pipe from this facility. There are no limits associated with this monitoring; the data will be used to set future permit limits.

<u>Parameter</u>	<u>Frequency</u>	<u>Sample Type</u>
pH	Monthly	Grab
Temperature, °C	Monthly	Grab

D. WHOLE EFFLUENT TOXICITY (WET) TESTING

1. Effluent Limitations (Toxic Pollutants)

Effective immediately upon issuance of this permit modification, there shall be no chronic toxicity occurring in the effluent from this facility.
2. Whole Effluent Testing (Chronic).
Starting in the third quarter of calendar year 2013, the permittee shall, at least once each calendar quarter, conduct chronic static replacement toxicity tests on a 24 hour composite sample of the discharge. Quarterly samples shall be collected on a two (2) day progression; i.e., if the first quarterly sample is on a Monday, during the next quarter, sampling shall begin on a Wednesday, etc. ***Because of logistics involved with getting samples to the contract laboratory to be analyzed before expiration of hold times, WET sampling is not required on Friday, Saturday, or Sunday.***

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The replacement static toxicity tests shall be conducted in accordance with the procedures set out in 40 CFR 136 and the most current edition of *Methods for Measuring the Chronic Toxicity of Effluents and Receiving Waters to Freshwater and Marine Organisms*, EPA-821--R-02-013. In the case of conflicts in method, 40 CFR 136 will prevail. The permittee shall conduct a chronic static renewal toxicity test using *Ceriodaphnia dubia* and a chronic seven-day static toxicity test using *Pimephales promelas*. All tests will be conducted utilizing a multi-dilution series consisting of at least five (5) concentrations and a control as defined below:

Summer (April through September)

100% effluent
72% effluent
60% effluent
25% effluent
12.5% effluent
control (or 0% effluent)

Winter (October through March)

100% effluent
60% effluent
46% effluent
30% effluent
12.5%effluent
Control (or 0% effluent)

In the event of inconclusive test results, the WDEQ reserves the right to require the permittee to perform additional tests at alternate dilutions and/or replicates. The WDEQ also reserves the right to require the submission of all information regarding all initiated tests, regardless of whether the tests were carried to completion or not.

Chronic toxicity occurs when during a chronic toxicity test, the 25% inhibition concentration (IC_{25}) calculated on the basis of test organism survival and growth or survival and reproduction, is less than or equal to 72% effluent dilution for April through September; and 46% from October through March.

If chronic toxicity occurs at any outfall during a sampling period, then WDEQ will assume that all outfalls, which have not yet been sampled, exhibit similar chronic toxicity characteristics as well.

If a test acceptability criterion is not met for control survival, growth, or reproduction, the test shall be considered invalid. In such cases, the test shall be repeated until all test acceptability criteria are met and valid results are obtained.

If chronic toxicity occurs, an additional test shall be conducted within two (2) weeks of the date of when the permittee learned of the test failure. If only one species fails, retesting may be limited to this species. Should chronic toxicity occur in the second test, testing shall occur once a month until further notified by the permit issuing authority. The permittee shall promptly take all reasonable measures necessary to immediately reduce toxicity if the suspected toxicity is known.

Quarterly test results shall be reported on the most recent version of EPA Region 8 Format for Whole Effluent Reporting along with the Discharge Monitoring Report (DMR) submitted for the end of the reporting calendar quarter (e.g., whole effluent results for the calendar quarter ending March 31, shall be reported with the DMR due April 28, with the remaining reports submitted with DMRs due each July 28, October 28 and January 28). Monthly test results shall be reported along with the DMR submitted for that month and shall include all chemical and physical data as specified.

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If the results for five consecutive quarters of testing indicate no chronic toxicity, the permittee may request the permit issuing authority to reduce testing frequency, and/or reduce testing to one species on an alternating basis, and/or modify testing to the acute test program. The permit issuing authority may approve or deny the request based on the results and other available information without an additional public notice. If the request is approved, the test procedures are to be the same as specified above for the test species.

3. Toxicity Reduction Evaluation (TRE) and Toxicity Identification Evaluation (TIE)

Should toxicity be detected in the permittee's discharge, a TIE-TRE shall be undertaken by the permittee to establish the cause of the toxicity, locate the source(s) of the toxicity, and develop control of, or treatment for the toxicity. Failure to initiate, or conduct an adequate TIE-TRE, or delays in the conduct of such tests, shall not be considered a justification for noncompliance with the whole effluent toxicity limits contained in this permit. A TRE plan needs to be submitted to the permitting authority within 45 days after confirmation of the continuance of effluent toxicity.

If acceptable to the permit issuing authority, and if in conformance with current regulations, this permit may be reopened and modified to incorporate TRE conclusions relating to additional numerical limitations, a modified compliance schedule, and or modified whole effluent protocol.

E. MONITORING AND REPORTING

1. Representative Sampling

Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit and, unless otherwise specified, before the effluent joins or is diluted by any other wastestream, body of water, or substance. Monitoring points shall not be changed without notification to and approval by, the permit issuing authority. Sludge samples shall be collected immediately prior to the disposal practice at a location representative of the sludge.

2. Reporting

Effluent monitoring results obtained during the previous one month shall be summarized and reported on a Discharge Monitoring Report Form. Until further notice, sludge monitoring results may be reported in the testing laboratory's normal format (there is no EPA standard form at this time), but should be on letter size pages. If the permit requires whole effluent toxicity (WET) (biomonitoring) testing, WET test results must be reported on the most recent version of EPA Region 8 Guidance for Whole Effluent Reporting. Legible copies of these, and all other reports required herein, shall be signed and certified in accordance with the Signatory Requirements (see Part II.A.11.), and submitted to the state water pollution control agency at the following address. The reports must be received by the agency no later than the 28th day of the month following the completed reporting period. The first report is due on **July 28, 2013**.

Wyoming Department of Environmental Quality- Water Quality Division 122 West 25th Street, 4 West Cheyenne, WY 82002 Telephone: (307) 777-7781	U.S. Environmental Protection Agency Mailcode 8ENF-PJ 1595 Wynkoop Street Denver, CO 80202-1129 Telephone: (303) 293-1622
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If no discharge occurs during the reporting period, "no discharge" shall be reported. If discharge is intermittent during the reporting period, sampling shall be done while the facility is discharging.

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3. Definitions

Concentration Values

- a. Daily Maximum (mg/L) - The highest single reading from any grab or composite sample collected during the reporting period.
- b. Monthly Average (mg/L) - The arithmetic mean (geometric mean in the case of fecal coliform or E. coli) of all composite and/or grab samples collected during a calendar month.
- c. Weekly Average (mg/L) - The arithmetic mean (geometric mean in the case of fecal coliform or E. coli) of all composite and/or grab samples collected during any week. A week begins at 12:01 a.m. Sunday morning and ends at 12:00 midnight Saturday evening.

Quantity Values

- d. Daily Maximum - The highest single daily quantity reading (see Calculations below) recorded during the reporting period.
- e. Monthly Average - The arithmetic mean (geometric mean in the case of fecal coliform or E. coli bacteria) of all the daily quantity readings (see Calculations below) recorded during a calendar month.
- f. Weekly Average - The arithmetic mean (geometric mean in the case of fecal coliform or E. coli bacteria) of all the daily quantity readings (see Calculations below) recorded during a week. A week begins at 12:01 am Sunday morning and ends at 12:00 midnight Saturday evening.

Flow Values

- g. Daily Flow - The flow volume recorded on any single day. The daily flow volume may be determined by using an instantaneous reading (if authorized by this permit) or a continuous recorder.
- h. Monthly Average Flow - The arithmetic mean of all daily flow values recorded during a calendar month.
- i. Weekly Average Flow - The arithmetic mean of all daily flow values recorded during a week. A week begins at 12:01 am on Sunday morning and ends at 12:00 midnight Saturday evening.

Calculations

- j. Daily Quantity (kg/day) - The quantity, in kilograms per day, of pollutant discharged on a single day. The Daily quantity shall be calculated by multiplying the composite or grab sample concentration value for that day in milligrams/liter (mg/L) times the flow volume (in millions of gallons per day - MGD) for that day times 3.78. If a flow volume reading for the day the sample is collected is not available, the average flow volume reading for the entire reporting period shall be used.

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- k. Daily Quantity (#/day) - The quantity, in number per day, of bacteria or other pollutants discharged on a single day. The number per day shall be calculated by multiplying the composite or grab sample result for that day, in number per 100 milliliters (#/100 mL), times the flow volume (in millions of gallons per day - MGD) times 3.78×10^7 . If a flow volume reading for the day the sample is collected is not available, the average flow volume reading for the entire reporting period shall be used.
- L. Geometric Mean - Calculated in accordance with the procedure described in the most recent edition of "Standard Methods for the Examination of Water and Wastewater".

Miscellaneous

- m. A "composite" sample, for monitoring requirements, is defined as a minimum of four (4) grab samples collected at equally spaced two (2) hour intervals and proportioned according to flow.
- n. An "instantaneous" measurement for monitoring requirements is defined as a single reading, measurement, or observation.
- o. "MGD", for monitoring requirements, is defined as million gallons per day.
- p. "Net" value, if noted under Effluent Characteristics, is calculated on the basis of the net increase of the individual parameter over the quantity of that same parameter present in the intake water measured prior to any contamination or use in the process of this facility. Any contaminants contained in any intake water obtained from underground wells shall not be adjusted for as described above and, therefore, shall be considered as process input to the final effluent. Limitations in which "net" is not noted are calculated on the basis of gross measurements of each parameter in the discharge, irrespective of the quantity of those parameters in the intake waters.
- q. A "pollutant" is any substance or substances which, if allowed to enter surface waters of the state, causes or threatens to cause pollution as defined in the Wyoming Environmental Quality Act, Section 35-11-103.

4. Test Procedures

Test procedures for the analysis of pollutants, collection of samples, sample containers, sample preservation, and holding times, shall conform to regulations published pursuant to 40 CFR, Part 136, unless other test procedures have been specified in this permit.

5. Recording of Results

For each measurement or sample taken pursuant to the requirements of this permit, the permittee shall record the following information:

- a. The exact place, date and time of sampling;
- b. The dates and times the analyses were performed;
- c. The person(s) who performed the analyses and collected the samples;
- d. The analytical techniques or methods used; and
- e. The results of all required analyses including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine the results.

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6. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit, using approved analytical methods as specified above, the results of such monitoring shall be included in the calculation and reporting of the values required in the Discharge Monitoring Report Form. Such increased frequency shall also be indicated.

7. Records Retention

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurements report or application. This period may be extended by request of the administrator at any time. Data collected on site, copies of Discharge Monitoring Reports and a copy of this WYPDES permit must be maintained on site during the duration of activity at the permitted location.

8. Penalties for Tampering

The Act provides that any person who falsifies, tampers with or knowingly renders inaccurate, any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than two (2) years per violation, or both.

9. Location of Discharge/Monitoring Points

See Table 1, Below.

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**TABLE 1
OUTFALLS
WY0020672
City of Riverton WWTP**

Outfall	Qtr/Qtr	Section	Township	Range	Latitude	Longitude	Receiving Water
001*	SWNW	36	1N	4E	43.0197777	-108.3587222	The Wind River (class 2AB)
DMP1	SENE	36	1N	4E	43.022902	-108.343814	The Wind River (class 2AB), approximately 2 stream widths downstream from the facility discharge pipe.

*Asterisk denotes outfalls for which WDEQ has field-verified the Latitude and Longitude locations. These are considered to be the most accurate location data available for these outfalls, and will supersede Latitude and Longitude values presented in the application.

PART II

A. MANAGEMENT REQUIREMENTS

1. Changes

The permittee shall give notice to the administrator of the Water Quality Division as soon as possible of any physical alterations or additions to the permitted facility. Notice is required when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29 (b); or
- b. The alteration or addition could change the nature or increase the quantity of pollutants discharged.

2. Noncompliance Notification

- a. The permittee shall give advance notice of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
- b. The permittee shall report any noncompliance which may endanger health or the environment as soon as possible, but no later than 24 hours from the time the permittee first became aware of the circumstances. The report shall be made to the Water Quality Division, Wyoming Department of Environmental Quality at (307) 777-7781.
- c. For any incidence of noncompliance, including noncompliance related to non-toxic pollutants or non-hazardous substances, a written submission shall be provided within five (5) days of the time that the permittee becomes aware of the noncompliance circumstance.

The written submission shall contain:

- (1) A description of the noncompliance and its cause;
 - (2) The period of noncompliance, including exact dates and times;
 - (3) The estimated time noncompliance is expected to continue if it has not been corrected; and
 - (4) Steps taken or planned to reduce, eliminate and prevent reoccurrence of the noncompliance.
- d. The following occurrences of unanticipated noncompliance shall be reported by telephone to the Water Quality Division, Watershed Management Section, WYPDES Program (307) 777-7781 as soon as possible, but no later than 24 hours from the time the permittee first became aware of the circumstances.
- (1) Any unanticipated bypass which exceeds any effluent limitation in the permit;
 - (2) Any upset which exceeds any effluent limitation in the permit; or

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- (3) Violation of a maximum daily discharge limitation for any toxic pollutants or hazardous substances, or any pollutants specifically identified as the method to control a toxic pollutant or hazardous substance listed in the permit.
- e. The administrator of the Water Quality Division may waive the written report on a case-by-case basis if the oral report has been received within 24 hours by the Water Quality Division, WYPDES Program (307) 777-7781.
- f. Reports shall be submitted to the Wyoming Department of Environmental Quality at the address in Part I under Reporting and to the Planning and Targeting Program, 8ENF-PT, Office of Enforcement, Compliance, and Environmental Justice, U.S. EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129.
- g. The permittee shall report all instances of noncompliance that have not been specifically addressed in any part of this permit at the time the monitoring reports are due.

3. Facilities Operation

The permittee shall, at all times, properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. However, the permittee shall operate, as a minimum, one complete set of each main line unit treatment process whether or not this process is needed to achieve permit effluent compliance.

4. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to waters of the state resulting from noncompliance with any effluent limitations specified in this permit, including such accelerated or additional monitoring as necessary to determine the nature and impact of the noncomplying discharge.

5. Bypass of Treatment Facilities

- a. Bypass means the intentional diversion of waste streams from any portion of a treatment facility.
- b. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs c. and d. of this section. Return of removed substances to the discharge stream shall not be considered a bypass under the provisions of this paragraph.
- c. Notice:
 - (1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice at least 60 days before the date of the bypass.
 - (2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part II.A.2.

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- d. Prohibition of bypass.
- (1) Bypass is prohibited and the administrator of the Water Quality Division may take enforcement action against a permittee for a bypass, unless:
 - (a) The bypass was unavoidable to prevent loss of life, personal injury or severe property damage;
 - (b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (c) The permittee submitted notices as required under paragraph c. of this section.
- e. The administrator of the Water Quality Division may approve an anticipated bypass, after considering its adverse effects, if the administrator determines that it will meet the three conditions listed above in paragraph d. (1) of this section.

6. Upset Conditions

- a. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improper designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- b. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of paragraph c. of this section are met.
- c. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:
 - (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required under Part II.A.2; and
 - (4) The permittee complied with any remedial measures required under Part II.A.4.
- d. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

7. Removed Substances

Solids, sludges, filter backwash or other pollutants removed in the course of treatment or control of wastewaters or intake waters shall be disposed of in a manner such as to prevent any pollutant from such materials from entering waters of the state.

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8. Power Failures

In order to maintain compliance with the effluent limitations and prohibitions of this permit, the permittee shall either:

- a. In accordance with a schedule of compliance contained in Part I, provide an alternative power source sufficient to operate the wastewater control facilities; or
- b. If such alternative power source as described in paragraph a. above is not in existence and no date for its implementation appears in Part I, take such precautions as are necessary to maintain and operate the facility under its control in a manner that will minimize upsets and insure stable operation until power is restored.

9. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the federal act and the Wyoming Environmental Quality Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give the administrator of the Water Quality Division advance notice of any planned changes at the permitted facility or of any activity which may result in permit noncompliance.

10. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

11. Signatory Requirements

All applications, reports or information submitted to the administrator of the Water Quality Division shall be signed and certified.

- a. All permit applications shall be signed as follows:
 - (1) For a corporation: by a responsible corporate officer;
 - (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
 - (3) For a municipality, state, federal or other public agency: by either a principal executive officer or ranking elected official.
- b. All reports required by the permit and other information requested by the administrator of the Water Quality Division shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - (1) The authorization is made in writing by a person described above and submitted to the administrator of the Water Quality Division; and

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- (2) The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
- c. If an authorization under paragraph II.A.11.b. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph II.A.11.b must be submitted to the administrator of the Water Quality Division prior to or together with any reports, information or applications to be signed by an authorized representative.
- d. Any person signing a document under this section shall make the following certification:

"I certify, under penalty of law, that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

B. RESPONSIBILITIES

1. Inspection and Entry

If requested, the permittee shall provide written certification from the surface landowner(s), if different than the permittee, that the administrator or the administrator's authorized agent has access to all physical locations associated with this permit including well heads, discharge points, reservoirs, monitoring locations, and any waters of the state.

The permittee shall allow the administrator of the Water Quality Division or an authorized representative, upon the presentation of credentials and other documents as may be required by law, to:

- a. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
- b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- c. Inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit; and
- d. Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the federal act, any substances or parameters at any location.

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2. Transfer of Ownership or Control

In the event of any change in control or ownership of facilities from which the authorized discharges emanate, the permittee shall notify the succeeding owner or controller of the existence of this permit by letter, a copy of which shall be forwarded to the regional administrator of the Environmental Protection Agency and the administrator of the Water Quality Division. The administrator of the Water Quality Division shall then provide written notification to the new owner or controller of the date in which they assume legal responsibility of the permit. The permit may be modified or revoked and reissued to change the name of the permittee and incorporate such other requirements as described in the federal act.

3. Availability of Reports

Except for data determined to be confidential under Section 308 of the federal act, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Wyoming Department of Environmental Quality and the regional administrator of the Environmental Protection Agency. As required by the federal act, effluent data shall not be considered confidential. Knowingly making any false statement on any such report may result in the imposition of criminal penalties as provided for in Section 309 of the federal act.

4. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under Section 307 (a) of the federal act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Changes in Discharge of Toxic Substances

Notification shall be provided to the administrator of the Water Quality Division as soon as the permittee knows of, or has reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) One hundred micrograms per liter (100 µg/l);
 - (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (3) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21 (g) (7); or
 - (4) The level established by the director of the Environmental Protection Agency in accordance with 40 CFR 122.44 (f).
- b. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (1) Five hundred micrograms per liter (500 µg/l);
 - (2) One milligram per liter (1 mg/l) for antimony;

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- (3) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21 (g) (7); or
- (4) The level established by the director of the Environmental Protection Agency in accordance with 40 CFR 122.44 (f).

6. Civil and Criminal Liability

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. As long as the conditions related to the provisions of "Bypass of Treatment Facilities" (Part II.A.5), "Upset Conditions" (Part II.A.6), and "Power Failures" (Part II.A.8) are satisfied then they shall not be considered as noncompliance.

7. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

8. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under Section 311 of the federal act.

9. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties established pursuant to any applicable state or federal law or regulation. In addition, issuance of this permit does not substitute for any other permits required under the Clean Water Act or any other federal, state, or local law.

10. Property Rights

The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights nor any infringement of federal, state or local laws or regulations.

11. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

12. Duty to Provide Information

The permittee shall furnish to the administrator of the Water Quality Division, within a reasonable time, any information which the administrator may request to determine whether cause exists for modifying, revoking and reissuing or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the administrator, upon request, copies of records required by this permit to be kept.

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13. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or any report to the administrator of the Water Quality Division, it shall promptly submit such facts or information.

14. Permit Action

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

15. Permit Fees

Once this permit has been issued, the permittee will be assessed a \$100.00 per-year permit fee by the Water Quality Division. The fee year runs from January 1st through December 31st. This permit fee will continue to be assessed for as long as the permit is active, regardless of whether discharge actually occurs. This fee is not pro-rated. If the permit is active during any portion of the fee year, the full fee will be billed to the permittee for that fee year. In the event that this permit is transferred from one permittee to another, each party will be billed the full permit fee for the fee year in which the permit transfer was finalized. See the Wyoming Environmental Quality Act §35-11-312 for further information.

PART III

A. OTHER REQUIREMENTS

1. Percentage Removal Requirements

The arithmetic mean of the Total BOD and the Total Suspended Solids concentrations for effluent samples collected in a period of 30 consecutive days shall not exceed 15 percent of the arithmetic mean of the concentrations for influent samples collected at approximately the same times during the same period (85 percent removal). This is in addition to the concentration limitations on Total BOD, and Total Suspended Solids. In the case of stabilization pond treatment systems, this section does not apply to the parameter Total Suspended Solids.

2. Violations Resulting from Overloading

Should there be a violation of any conditions of this permit, the Wyoming Department of Environmental Quality has the authority under Sections 35-11-901 and 35-11-902 of the Wyoming Environmental Quality Act to proceed in a court of competent jurisdiction to restrict or prohibit further connections to the treatment system covered by this permit by any sources not utilizing the system prior to the finding that such a violation occurred.

3. Discharge Duration

If the rate of discharge is controlled, that rate and duration of discharge shall be reported.

4. Flow Measurement

At the request of the Administrator of the Water Quality Division, the permittee must be able to show proof of the accuracy of any flow measuring device used in obtaining data submitted in the monitoring report. The flow measuring device must indicate values of within plus or minus ten (10) percent of the actual flow being measured.

5. Sewer Overflow Located Prior to Waste Treatment Facility

Overflow structures shall be maintained and operated in such a manner that no discharge shall occur except to prevent health hazards, severe property damage or loss of treatment capacity.

Such overflows shall satisfy Wyoming water quality standards and/or any appropriate federal or state effluent limitations. Following documentation of specific water quality standard or effluent standard violations resulting from such overflows, specific numerical effluent limitations, or the requirement for elimination of the overflow structures, may be included upon reissuance or revision of this permit.

6. Compliance with Construction Grant

In the case of publicly owned treatment works, the permittee shall comply with those terms of any construction grant implementing the provisions of Section 201 (b) through (g) of the Clean Water Act.

7. 208 (b) Plans

This permit may be modified, suspended or revoked to comply with the provisions of any 208 (b) plan certified by the Governor of the State of Wyoming.

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8. Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include the appropriate effluent limitations (and compliance schedule, if necessary) or other appropriate requirements if one or more of the following events occurs:

- a. The state water quality standards of the receiving water(s) to which the permittee discharges are modified in such a manner as to require different effluent limits than contained in this permit;
- b. A total maximum daily load (TMDL) and/or watershed management plan is developed and approved by the state and/or the Environmental Protection Agency which specifies a wasteload allocation for incorporation in this permit;
- c. A revision to the current water quality management plan is approved and adopted which calls for different effluent limitations than contained in this permit;
- d. Downstream impairment is observed and the permitted facility is contributing to the impairment;
- e. The limits established by the permit no longer attain and/or maintain applicable water quality standards;
- f. The permit does not control or limit a pollutant that has the potential to cause or contribute to a violation of a state water quality standard.
- g. If new applicable effluent guidelines and/or standards have been promulgated and the standards are more stringent than the effluent limits established by the permit.
- h. In order to protect water quality standards in neighboring states, effluent limits may be incorporated into this permit or existing limits may be modified to ensure that the appropriate criteria, water quality standards and assimilative capacity are attained.

9. Permit Modification

After notice and opportunity for a hearing, this permit may be modified, suspended or revoked in whole or in part during its term for cause including, but not limited to, the following:

- a. Violation of any terms or conditions of this permit;
- b. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts;
- c. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge; or
- d. If necessary to comply with any applicable effluent standard or limitation issued or approved under Sections 301 (b) (2) (C) and (D), 304 (b) (2) and 307 (a) (2) of the federal act, if the effluent standard or limitation so issued or approved:
 - (1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
 - (2) Controls any pollutant not limited in the permit.

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10. Toxicity Limitation - Reopener Provision

This permit may be reopened and modified (following proper administrative procedures) to include a new compliance date, additional or modified numerical limitations, a new or different compliance schedule, a change in the whole effluent protocol or any other conditions related to the control of toxicants if one or more of the following events occur:

- a. Toxicity was detected late in the life of the permit near or past the deadline for compliance;
- b. The toxicity reduction evaluation (TRE) results indicate that compliance with the toxic limits will require an implementation schedule past the date for compliance and the permit issuing authority agrees with the conclusion;
- c. The TRE results indicate that the toxicant(s) represent pollutant(s) that may be controlled with specific numerical limits and the permit issuing authority agrees that numerical controls are the most appropriate course of action;
- d. Following the implementation of numerical controls on toxicants, the permit issuing authority agrees that a modified whole effluent protocol is necessary to compensate for those toxicants that are controlled numerically;
- e. The TRE reveals other unique conditions or characteristics which, in the opinion of the permit issuing authority, justify the incorporation of unanticipated special conditions in the permit.

11. Severability

The provisions of this permit are severable and if, any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit, shall not be affected thereby.

12. Penalties for Falsification of Reports

The federal act provides that any person who knowingly makes any false statement, representation or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation or by imprisonment for not more than two (2) years per violation or both.

B. INDUSTRIAL WASTES

1. Industrial Waste Management

- a) The Permittee has the responsibility to protect the Publicly-Owned Treatment Works (POTW) from pollutants which would inhibit, interfere, or otherwise be incompatible with operation of the treatment works including interference with the use or disposal of municipal sludge.
- b) Pretreatment Standards (40 CFR Section 403.5) developed pursuant to Section 307 of the Federal Clean Water Act (the Act) require that the Permittee shall not allow, under any circumstances, the introduction of the following pollutants to the POTW from any source of nondomestic discharge:
 - i) Any pollutant which may cause Pass Through or Interference;

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- ii) Pollutants which create a fire or explosion hazard in the POTW, including, but not limited to, wastestreams with a closed cup flashpoint of less than sixty (60) degrees Centigrade (140 degrees Fahrenheit) using the test methods specified in 40 CFR Section 261.21;
 - iii) Pollutants which will cause corrosive structural damage to the POTW, but in no case discharges with a pH of lower than 5.0 s.u., unless the treatment facilities are specifically designed to accommodate such discharges;
 - iv) Solid or viscous pollutants in amounts which will cause obstruction to the flow in the POTW, or other interference with the operation of the POTW;
 - v) Any pollutant, including oxygen demanding pollutants (e.g., BOD), released in a discharge at a flow rate and/or pollutant concentration which will cause Interference with any treatment process at the POTW;
 - vi) Heat in amounts which will inhibit biological activity in the POTW resulting in Interference, but in no case heat in such quantities that the temperature at the POTW treatment plant exceeds forty (40) degrees Centigrade (104 degrees Fahrenheit) unless the Approval Authority, upon request of the POTW, approves alternate temperature limits;
 - vii) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through at the POTW;
 - viii) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quantity that may cause acute worker health and safety problems;
 - ix) Any trucked or hauled pollutants, except at discharge points designated by the POTW; and
 - x) Any specific pollutant which exceeds a local limitation established by the Permittee in accordance with the requirements of 40 CFR Section 403.5(c) and (d).
- c) EPA shall be the Approval Authority and the mailing address for all reporting and notifications to the Approval Authority shall be: Office of Enforcement, Compliance, and Environmental Justice - Water (8ENF-W-NP), USEPA - Region VIII, 1595 Wynkoop, Denver, CO 80202. Should the State be delegated authority to implement and enforce the Pretreatment Program in the future, the Permittee shall be notified of the delegation and the **Wyoming DEQ/WQD** shall become the Approval Authority.
- d) In addition to the general limitations expressed above, more specific Pretreatment Standards have been and will be promulgated for specific industrial categories under Section 307 of the Act (40 CFR Parts 405-471, 40 CFR chapter I, subchapter N.).
- e) The Permittee must notify the **Wyoming DEQ/WQD** and the Approval Authority, of any new introductions by new or existing industrial users or any substantial change in pollutants from any industrial user within sixty (60) days following the introduction or change, as required in 40 CFR 122.42(b)(1-3). Such notice must identify:
- (i) Any new introduction of pollutants into the POTW from an industrial user which would be subject to Sections 301, 306, and 307 of the Act if it were directly discharging those pollutants; or

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(ii) Any substantial change in the volume or character of pollutants being introduced into the POTW by any industrial user;

(iii) For the purposes of this section, adequate notice shall include information on:

- (1) The identity of the industrial user;
- (2) The nature and concentration of pollutants in the discharge and the average and maximum flow of the discharge to be introduced into the POTW; and
- (3) Any anticipated impact of the change on the quantity or quality of effluent to be discharged from or biosolids produced at such POTW.

(iv) For the purposes of this section, a significant industrial user shall include:

- (1) Any discharger subject to Categorical Pretreatment Standards under Section 307 of the Act and 40 CFR chapter I, subchapter N;
- (2) Any discharger which has a process wastewater flow of 25,000 gallons or more per day;
- (3) Any discharger contributing five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant;
- (4) Any discharger who is designated by the Approval Authority as having a reasonable potential for adversely affecting the POTW's operation or for violating any Pretreatment Standards or requirements;

f) The Permittee shall sample and analyze the effluent for the following pollutants:

- | | |
|------------------|----------------|
| Total Arsenic | Total Nickel |
| Total Cadmium | Total Selenium |
| Total Chromium | Total Silver |
| Total Copper | Total Zinc |
| Total Lead | Total Cyanide |
| Total Mercury | Total Phenols |
| Total Molybdenum | |

The sampling shall commence within thirty (30) days of the effective date of this permit and continue at the following frequency:

Sampling Schedule for Non-Approved Programs:

Majors (above 1.0 MGD) 1 per year

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Sampling and analytical procedures shall be in accordance with guidelines established in 40 CFR Part 136. Where sampling methods are not specified the effluent samples collected shall be composite samples consisting of at least twelve (12) aliquots collected at approximately equal intervals over a representative 24 hour period and composited according to flow. Where a flow proportioned composite sample is not practical, the Permittee shall collect at least four (4) grab samples, taken at equal intervals over a representative 24 hour period. Lagoon treatment systems may collect a single effluent grab sample.

The results of all analyses shall be attached to, and reported along with the Discharge Monitoring Report (DMR) submitted for the end of that reporting period.

- g) At such time as a specific pretreatment limitation becomes applicable to an industrial user of the Permittee, the **Wyoming DEQ /WQD** and/or Approval Authority may, as appropriate:
- (i) Amend the Permittee's **WYPDES** discharge permit to specify the additional pollutant(s) and corresponding effluent limitation(s) consistent with the applicable Pretreatment Standards; or,
 - (ii) Amend the Permittee's **WYPDES** discharge permit to require the Permittee to develop and submit an approvable Pretreatment program under a compliance schedule, in accordance with procedures in 40 CFR 403.8(e). The modification of a POTW's NPDES Permit for the purposes of incorporating a POTW Pretreatment Program approved in accordance with the procedure in §403.11 shall be deemed a minor Permit modification subject to the procedures in 40 CFR 122.63(g); or,
 - (ii) Require the Permittee to specify, by ordinance, order, or other enforceable means, the type of pollutant(s) and the maximum amount which may be discharged to the Permittee's POTW for treatment. Such requirement shall be imposed in a manner consistent with the POTW program development requirements of the General Pretreatment Regulations at 40 CFR Part 403; and/or,
 - (iii) Require the Permittee to monitor its discharge for any pollutant which may likely be discharged from the Permittee's POTW, should the industrial user fail to properly pretreat its waste.
- h) The **Wyoming DEQ/WQD** and the Approval Authority retains, at all times, the right to take legal action against any source of nondomestic discharge, whether directly or indirectly controlled by the Permittee, for violations of a permit, order or similar enforceable mechanism issued by the Permittee, violations of any Pretreatment Standard or requirement, or for failure to discharge at an acceptable level under national standards issued by EPA under 40 CFR, chapter I, subchapter N. In those cases where a **WYPDES** permit violation has occurred because of the failure of the Permittee to properly develop and enforce Pretreatment Standards and requirements as necessary to protect the POTW, the **Wyoming DEQ/WQD** and/or Approval Authority shall hold the Permittee and/or industrial user responsible and may take legal action against the Permittee as well as the industrial user(s) contributing to the permit violation.

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AFFIDAVIT OF BECKY ENOS

1. My name is Becky Enos, and I am the Deputy Fremont County Clerk who administers liquor licenses for Fremont County, Wyoming. I am over the age of eighteen and have been employed as such for 19 years. My business address is 450 N. 2nd Street, Room 205, Lander, Wyoming 82520.

2. In my capacity as Deputy County Clerk, I perform administrative duties for the Fremont County Board of Commissioners, the governing body of Fremont County. Therein my duties include, but are not limited to, attending meetings of the Board and keeping a record thereof, and issuing licenses approved by the Board.

3. A portion of my duties includes the issuance of liquor licenses upon approval by the Board of Commissioners. As a custodian of public records, I have records dating back to the County's inception in 1884.

4. To the best of my knowledge and belief, Fremont County has 2 liquor licenses currently issued in the area ceded in the 1905 Act. Said licenses are issued pursuant to the authority of the State of Wyoming.

5. The County Commissioners hold a public hearing each year regarding the renewal of previously issued licenses. I have attended these public hearings during my employment and, during that time, no representative of the Eastern Shoshone Tribe, the Northern Arapaho Tribe, nor the Federal Government has ever appeared at a public hearing to contest the County's jurisdiction over renewal of liquor licenses in the ceded area.

FURTHER THE AFFIANT SAYETH NOT.

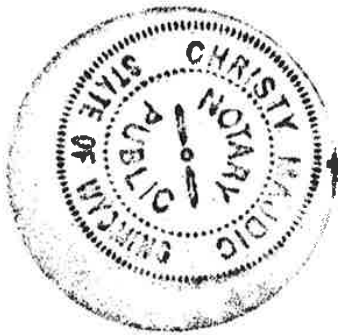
DATED this 29th day of December, 2014.

Becky Enos
Becky Enos

STATE OF WYOMING)
) ss.
COUNTY OF FREMONT)

Subscribed and sworn to before me this 29th day of December, 2014 by Becky Enos.

Witness my hand and official seal.



Christy Hajdic
Notary Public

My commission expires: September 30, 2018

AFFIDAVIT OF PATRICIA O'BRIEN ARP

1) My name is Patricia O'Brien Arp, and I am the Deputy Secretary of State. I am over the age of eighteen and have held that position for 19 years. My business address is Secretary of State's Office, 200 West 24th Street, Cheyenne, Wyoming 82002-0020.

2) As the Deputy Secretary of State, my duties include oversight of the day to day operations of the Wyoming Secretary of State's Office (Agency), including the Business Division, Elections Division, Compliance Division, Technology Division and general administrative operations. I inform and advise the Secretary of State on all matters of Agency operations and advise regarding all policy matters.

3) The Secretary of State's Office currently exercises jurisdiction over the City of Riverton, Wyoming, and the surrounding lands consistent with their location off the Wind River Indian Reservation. If the boundaries of the reservation are changed to include the City of Riverton, Wyoming, and the surrounding lands, I anticipate various impacts upon the Secretary of State's authority, or at least have questions as to how this Office's role will change with respect to administering those activities in and around Riverton, Wyoming.

4) As the Chief Election Officer pursuant to Wyo. Stat. Ann. § 22-2-103, I am unclear as to how Wyoming's election laws would apply in Riverton and whether federal election laws might apply instead. For example, would the Fremont County Clerks still have authority to administer elections in Riverton where tribal members are concerned? As the enforcement

authority for elections, would the Secretary of State's Office still enforce elections in all circumstances and would that authority apply to Native American tribal members in Riverton?

5) The Secretary of State is the filing agency for UCC and EFS liens. Wyo. Stat. Ann. § 34.1-9-501(a)(ii) & (b). The Wind River Reservation Tribes maintain their own filing system for these liens, and tribal liens are not filed with the Secretary of State. The primary users of Secretary of State's lien filing system are banks and other lending institutions. We do not currently accept any UCC filings from the Reservation, thus we would not accept any UCC lien filings from Riverton if it is designated as "Indian country." If Riverton is now Indian country and part of the reservation, it is unclear whether all liens would now be filed with the tribal system? If Riverton is Indian country, this may affect the priority of existing liens?

6) The Secretary of State requires that all businesses identifying Wyoming as their home state register and obtain a certificate of authority. Wyo. Stat. Ann. §§ 17-16-128, 17-19-128, 17-29-201. Businesses now located on the Reservation are considered "foreign" and must register as such if doing business in Wyoming. They are designated as "Tribal." If Riverton is classified as "Indian country" the Secretary of State, in concert with the Attorney General's Office, would need to determine if businesses in Riverton, which are currently registered to do business as a domestic business entity, will be dissolved; or be allowed to convert to a foreign corporation or other foreign business entity. Additionally, if it is determined that a business entity may transfer to a foreign entity and yet they do not do so, the Secretary of State would need to determine with the Attorney General's Office if the Secretary of State's Office should dissolve them. Finally, if an entity were found to be doing business without having registered their business with the Secretary of State, it would need to be determined if they should be subject to the \$5,000 fine or if they would be exempt since it is determined that Riverton is on

the reservation. There are currently 1,114 active businesses with a physical address in Riverton, Wyoming.

7) All Wyoming registered agents must reside in the State of Wyoming per Wyo. Stat. Ann. § 17-28-101(a)(ii)(A). Thus no one in Riverton could act as a registered agent or commercial registered agent if it is determined that Riverton is on the reservation.

8) The Secretary of State's office licenses stock brokerage firms and individual stockbrokers (agents). Wyo. Stat. Ann. §§ 17-4-2103 through -106. Currently, there are 11 brokerage firms and 20 stockbrokers in Riverton. Certain securities must be registered with the Secretary of State. Wyo. Stat. Ann. §§ 17-4-107 through -114. The Secretary of State's Office has authority to investigate and enjoin the issuance of securities that are fraudulent or otherwise not in conformance with law. Wyo. Stat. Ann. §§ 17-4-115 through -122. If Riverton is now Indian country and part of the Reservation, would securities issued by entities located in Riverton be subject to this Office's regulation? Would the Secretary of State continue to have authority to investigate fraudulent practices that occur in Riverton? If not, this Office may need to revoke licenses for those operating in Riverton.

9) There are currently 378 commissioned notaries public with an address in Riverton, Wyoming. A Notary Public must be a resident of Wyoming. There is currently no provision for the Secretary of State to take action to revoke a notary's commission. However, if the notary no longer resides in Wyoming, their notary commission is no longer valid and they have a statutory obligation to turn in their commission and surrender their notary stamp.

10) The Secretary of State administers Bucking Horse & Rider (BH&R) Trademark Licenses and Use Agreements. If the Secretary of State's Office could not enforce the outstanding BH&R licenses and business use agreements in Riverton, it may be determined that

they should be revoked. If people were using the state's federal trademark and not paying royalty, we could have an unfair trade problem with other licensees who are paying royalties.

11) The Secretary of State's Office acts through the U.S. Department of State to provide Authentication Services for those individuals residing in Wyoming. This includes attesting to the authenticity of documents for foreign adoptions, international exchange students and high school and college transcripts for students studying in Wyoming. These documents are most often authenticated by verifying that the document has been notarized by a Wyoming notary. If Riverton is determined to be in "Indian country", these services would be difficult to obtain for those individuals living in Riverton; and some documents generated on the reservation may not be able to be authenticated. It may have a wide impact since Riverton currently has a community College.

FURTHERMORE THE AFFIANT SAYETH NOT.

DATED this 2nd day of January, 2014



Patricia O'Brien Arp, Wyoming
Deputy Secretary of State,
State Capitol, 200 West 24th Street,
Cheyenne, WY 82002-0020

STATE OF WYOMING)
)SS.
COUNTY OF LARAMIE)

The foregoing was subscribed and sworn to before me by Patricia O'Brien Arp on this 3 day of January, 2014.

WITNESS my hand and official seal.





Notary Public

My Commission Expires: 1/28/15

AFFIDAVIT OF WILLIAM MILLER

1. My name is William Miller. I am an attorney licensed to practice law in the state of Wyoming. I am over the age of eighteen. My business address is 710 North 8th West, Riverton, Wyoming 82501.

2. I have been practicing estate law in Wyoming for 36 years.

3. In my experience, non-Indian estate matters involving property within Riverton, Wyoming are administered and probated through the Ninth Judicial District Court.

4. To the best of my knowledge and experience, neither the Eastern Shoshone Tribe, the Northern Arapaho Tribe, nor the Federal Government has ever tried to exert jurisdiction in probate or estate matters involving real property within the City of Riverton.

FURTHER THE AFFIANT SAYETH NOT.

DATED this 29th day of December, 2014.

William Miller
William Miller

STATE OF WYOMING)
) ss
COUNTY OF FREMONT)

Subscribed and sworn to before me this 29th day of December, 2014 by William Miller.

Witness my hand and official seal.



Vickie Bray
Notary Public

My commission expires: Oct 10, 2018

AFFIDAVIT OF MIKE BROADHEAD

1) My name is Charles “Mike” Broadhead, and I am the Chief of Police for the City of Riverton, Wyoming. I am over the age of eighteen and have held that position for 5 years. My business address is City of Riverton, 816 North Federal Boulevard, Riverton, Wyoming 82501.

2) As the Chief of Police, my duties pursuant to the Riverton City Code include management and supervision of the City of Riverton police department and the police officers of the City of Riverton and to preserve the peace, order, safety and cleanliness of the City of Riverton, and to enforce municipal ordinances and state law.

3) Pursuant to W.S. 15-3-202 the jurisdiction of the City of Riverton police department is generally confined to the Riverton City limits. Currently City of Riverton police officers do not have jurisdiction to enforce laws on the Wind River Indian Reservation.

4) The City of Riverton currently employs 28 police officers.

4) Motor vehicles being operated within the Riverton City limits are subject to the municipal ordinances of the City, including state statutes that have been incorporated into the Riverton Municipal Code by reference. Violations of the motor vehicle laws are enforced by officers of the City of Riverton, the Fremont County Sheriff and State troopers.

5) If an offense, whether a traffic offense or a misdemeanor, is committed within the City of Riverton a citation is issued and the offender is cited into the Riverton Municipal Court or the Fremont County Circuit Court. If found guilty the person pays a fine either to the City of

Riverton or to Fremont County depending upon the Court they are cited into. Such offenses would include the offense of speeding.

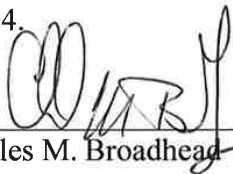
6) For the calendar year 2014 from January 1 to December 14, the City of Riverton police force issued a total of 1,253 traffic citations, and 2,475 misdemeanor citations, which averages to approximately 104 traffic citations, and 206 misdemeanor citations per month. These citations were issued by the 28 police officers employed by the City.

7) I am aware that the Bureau of Indian Affairs has 15 officers stationed at the Wind River Indian Reservation.

8) It is my opinion that the number of Bureau of Indian Affairs officers currently stationed at the Wind River Indian Reservation would not be able to enforce the laws in place in the City of Riverton in a manner that would adequately protect the public.

FURTHERMORE THE AFFIANT SAYETH NOT.

DATED this 15th day of December, 2014.

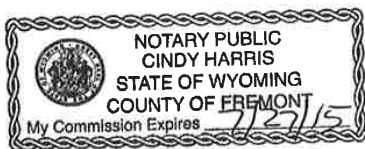



Charles M. Broadhead

STATE OF WYOMING)
)SS.
COUNTY OF FREMONT)

Subscribed and sworn to before me this 15 day of December, 2014 by Charles M. Broadhead.

Witness my hand and official seal.




Notary Public
My commission expires: 7/27/15

AFFIDAVIT OF SANDY LUERS

1) My name is Sandy Luers, and I am the Director of Community Development for the City of Riverton, Wyoming. I am over the age of eighteen and have held that position for almost 6 years. My business address is City of Riverton, 816 North Federal Boulevard, Riverton, Wyoming 82501. Prior to holding my current position with the City of Riverton I was a council member of the governing body of the City of Riverton.

2) As the Director of Community Development and the Building Official, my duties pursuant to the Riverton City Code include supervising the building department of the City of Riverton, including the approval of building permits, building inspections of construction works in progress, addressing zoning and zoning issues, and I am involved in the planning process in the City of Riverton.

3) During my tenure with the City of Riverton the City has required contractors erecting structures to file building plans, obtain a building permit, and to construct the same in compliance with the City of Riverton codes, including construction of buildings for the proper use in the City zone that they are located, construction of the structures in conformance with the requirements of the City codes, including compliance with the International Code Council building codes and the National Electrical Codes that have been adopted by the City of Riverton by reference. Inspections are conducted by the City of Riverton to ensure that the same are complied with.

4) At no time during my tenure have I ever been approached by the Eastern Shoshone or Northern Arapaho Tribal representatives with regard to the fact that a structure

being built in the City of Riverton needing to comply with any reservation zoning requirement or building code, nor have they ever contested my approval of a construction license.

FURTHERMORE THE AFFIANT SAYETH NOT.

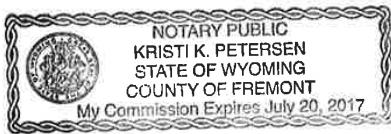
DATED this 15 day of December, 2014.

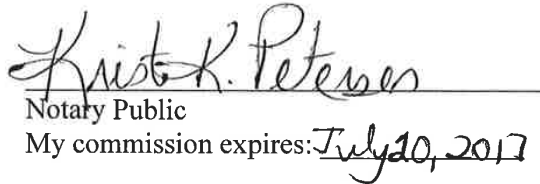

Sandy Luers

STATE OF WYOMING)
)SS.
COUNTY OF FREMONT)

Subscribed and sworn to before me this 15th day of December, 2014 by Sandy Luers.

Witness my hand and official seal.




Notary Public
My commission expires: July 20, 2017

AFFIDAVIT OF KYLE BUTTERFIELD

- 1) My name is Kyle Butterfield, and I am the Public works Director for the City of Riverton, Wyoming. I am over the age of eighteen and have held that position for under 1 year. My business address is City of Riverton, 816 North Federal Boulevard, Riverton, Wyoming 82501.
- 2) As the Public Works Director, my duties include supervision and management of the City water and waste water treatment plant, supervision and management of public works projects, supervision of the solid waste collection in the City of Riverton, and interacting with contractors on public works projects..
- 3) The permit for the waste water treatment plant is issued by the Wyoming Department of Environmental Quality. Attached to this Affidavit is a copy of the permit issued by the Wyoming Department of Environmental Quality.
- 4) At no time that I am aware of has a contractor on a City public works project been required to procure a tribal business license or comply with the provisions of TERO solely on the basis of that project.

FURTHERMORE THE AFFIANT SAYETH NOT.

DATED this 18 day of December, 2014.

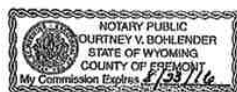


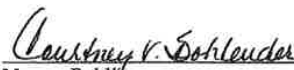
 Kyle Butterfield

STATE OF WYOMING)
)SS.
 COUNTY OF FREMONT)

Subscribed and sworn to before me this 18 day of December, 2014 by Kyle Butterfield.

Witness my hand and official seal.





 Notary Public
 My commission expires: August 23, 2016

FILED
JAN 25 2013
JULIE A. FREESE
FREMONT COUNTY CLERK
STATE OF WYOMING

DELEGATION AGREEMENT

**WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
FREMONT COUNTY**

Article I. Authority

1. Pursuant to the authority of W.S. 35-11-304(a), the State of Wyoming (State), acting through the Administrator of the Water Quality Division and the Director of the Department of Environmental Quality, referred to as DEQ, and Fremont County, a local governmental entity, referred to as Entity, enter into the following Delegation Agreement.

Article II. Introduction and Purpose

1. This Delegation Agreement is authorized by W.S. 35-11-304, which provides that, to the extent requested by a municipality, the water and sewer district or county, the DEQ shall delegate the authority to enforce and administer the provisions of W.S. 35-11-301(a)(iii) to local governmental entities, subject to certain conditions.

This Delegation Agreement provides for local assumption of such authority, and for promulgation of local regulations consistent with the Wyoming Environmental Quality Act (ACT) and applicable rules promulgated pursuant to the ACT.

2. The purpose of this Delegation Agreement is to foster state-local cooperation and conformity in the regulation of small wastewater systems and to provide uniform and effective application of the provisions of State law relating to the construction, operation and compliance of these facilities.
3. Under this Delegation Agreement, the enforcement and administration of permitting and inspection of small wastewater systems with less than 2,000 gallons per day average flows is delegated to qualifying local governmental entities which have complied with the requirements of W.S. 35-11-304, applicable Wyoming Water Quality Rules and Regulations (WWQRR), and the terms of the Wyoming Administrative Procedure Act, W.S. 16-3-101, et.seq..

Article III. Requirements for the Delegation Agreement

1. The State, by the DEQ, and the Entity, by the Fremont County Commission, affirm that they will comply with all of the provisions of this Delegation Agreement.

- (a) The DEQ shall be responsible for administering this Delegation Agreement on behalf of the State. The Designated Local Official shall administer this Delegation Agreement on behalf of the Entity, in accordance with W.S. 35-11-304(a)(ii).
- (b) The DEQ has and shall continue to have authority to carry out this Delegation Agreement, and shall expend sufficient support resources to effectively implement the delegation and oversight activities contemplated in W.S. 35-11-304(a).

Article IV. Terms of the Delegation Agreement

1. By execution of this Delegation Agreement, the DEQ delegates and the Entity accepts the authority and responsibility to enforce and administer the provisions of W.S. 35-11-301(a)(iii) for small wastewater systems. This delegation includes the authority to develop necessary rules, regulations, and standards in order to permit systems, to review and approve construction plans, conduct inspections, issue permits, enforce against violations, and to develop rules governing the review and appeal of any decision made by the Entity.

- (a) The Entity agrees to enforce and administer the small wastewater system program for areas within its boundaries. The boundaries are identified as the extent of Fremont County, Wyoming.
- (b) The Entity hereby designates a Delegated Local Official who is authorized to enforce and administer the small wastewater system program (Attachment A).

In the event the individual holding the Delegated Local Official position changes, the Entity shall submit a revised Attachment A request to the DEQ for approval and then the delegation agreement will be amended in writing by the DEQ.

- (d) The Entity has established rules and permitting procedures for the issuance of permits required under W.S. 35-11-301(a)(iii), which are at least as stringent as those promulgated by the State under W.S. 35-11-302(a)(iii). The local rules include the process by which an aggrieved party may seek a review of the Entity's action. These rules and procedures are included in Attachment B.
- (e) The Delegated Local Official shall establish and maintain an adequate system of records and information for each project permit, inspection, and enforcement action. The county may charge permitting and inspections fees as deemed appropriate by the county. The records and information system to be used by the Entity is described in Attachment C.
- (f) The Entity agrees to submit status reports to the DEQ annually. The DEQ will annually review the status report and may conduct an on-site program evaluation

of the small wastewater system program to assess the Entity's compliance with the terms of this agreement. Upon request and reasonable notice, the DEQ may during business hours inspect the records and procedures of the Entity with regard to the review, issuance, inspection and enforcement of the small wastewater system program.

Article V. Other Conditions of the Delegation Agreement

1. At the option of the Entity, projects involving alternative technologies, non-residential systems, or systems requiring an engineered design may be referred to the DEQ for a technical review. Results of the technical review will be provided to the Delegated County Official for consideration in evaluating a permit application.
2. No permit shall be issued for any small wastewater system which would result in non-compliance with an approved Water Quality Management Plan prepared under Sections 208 or 201 of the Federal Clean Water Act.
3. The Entity will commence performing the functions delegated by this Delegation Agreement upon the date of execution and continue until such time as delegation is suspended or revoked or until the Entity provides ninety (90) days notice of intent to terminate the Delegation Agreement.
4. This Delegation Agreement may be amended at any time by written agreement of both parties, unless otherwise agreed upon in the terms of the Delegation Agreement.

Article VI. Changes in DEQ or Entity Rules and Procedures

1. The DEQ may from time to time revise and promulgate new or revised construction and/or operation rules and administrative procedures. If necessary, in order to meet the requirements of W.S. 35-11-304(a), the Entity shall make such changes as may be accomplished by rule-making within six (6) months notice by the DEQ. Such changes shall be made in conformity with the requirements of W.S. 16-3-101, et.seq.
2. The DEQ and Entity shall provide each other with copies of any changes to their respective rules and procedures which pertain to the administration and enforcement of this agreement.

Article VII. Inspection

1. The Delegated Local Official shall provide for inspection of all facilities during construction to ensure the facilities have been constructed according to approved plans and specifications. The Delegated Local Official may also conduct periodic operation

inspections of facilities permitted under the authority of this Delegation Agreement, and may implement procedures for inspection and the reporting of inspection in conformity with W.S. 35-11-109(a)(vi). The Delegated Local Official will be the point of contact and inspection authority in dealing with permittees concerning operations and compliance with the permitting and operation standards covered by this Delegation Agreement.

2. For oversight purposes, the DEQ may designate authorized representatives to enter and inspect the construction and/or operation of the facilities described in this Delegation Agreement. These inspections shall be conducted in conformity with W.S. 35-11-109 (a)(vi). The Entity shall receive reasonable notice of such inspection and may participate in this inspection.

Article VIII. Enforcement

1. The Entity shall be the primary enforcement authority concerning local compliance with the requirements of the small wastewater system program of this Delegation Agreement. A legal opinion indicating that the Entity has necessary authority to enforce compliance is described in Attachment E.
 - (a) Should the Entity and the DEQ fail to agree regarding the appropriateness of any enforcement action or inaction, the DEQ may take any action necessary to comply with the terms of the ACT and applicable rules and procedures. The Delegation Agreement does not limit the DEQ's authority to enforce against other violations of State law.
 - (b) Through annual reports, the Entity shall notify the DEQ of all violations of applicable laws, regulations or orders and all actions taken with respect to such violations.

Article IX. Revocation, Suspension or Termination

1. This Delegation Agreement may be voluntarily terminated by the Entity upon ninety (90) days written notice. Additionally, the DEQ may revoke or temporarily suspend this Delegation Agreement if the Entity fails to perform its delegated duties or has otherwise violated the terms of this Agreement. The DEQ shall immediately notify the Delegated Local Official in writing of any revocation or suspension of the permitting authority. Such administrative action is subject to review by the Environmental Quality Council (EQC) if the Entity so requests within twenty (20) days or notice of the DEQ's action. Unless a revocation or suspension is appealed to the EQC, it becomes effective twenty (20) days after the receipt of such notice.
2. The Entity may not assign any of its functions or authority delegated by this Delegation Agreement without prior written consent of the DEQ.

- 3. The parties to this Delegation Agreement have read and understand all of its provision. This Delegation Agreement is effective upon execution this 16th day of January, 2013 and shall remain in effect until terminated as provided above.

Department of Environmental Quality

Todd Parfitt
 Todd Parfitt
 Director
 Department of Environmental Quality

1/16/13
 Date

John F. Wagner
 John F. Wagner, Administrator
 Water Quality Division

1/16/13
 Date

Fremont County

Douglas L. Thompson
 Douglas L. Thompson, Chairman
 Fremont County Commission

12/11/12
 Date

Attest: Jessie J. Freese 12-11-12

Raymond E. Price
 Raymond E. Price, Director
 Fremont County Planning Department

12/11/12
 Date



Attachment A

Name and Qualifications of the Delegated Local Official

Raymond E. Price, Director of Planning

B.S., Physical Geography, Michigan State University

M.A., Geology, Western Michigan University

M.A., Public Administration, University of Wyoming

Attachment B

Regulations – Appeals – Design Standards – Definitions

Regulations

The Fremont County Commissioners have adopted standards and rules to govern the permitting of small wastewater systems within Fremont County, Wyoming. This resolution is that of adopting **DEQ/WQD Chapter 11, Part D.**

Appeals

It is further adopted that any aggrieved party may seek a review on the actions taken by Fremont County. The aggrieved party can issue a request in writing to the **DEQ/WQD** for review and recommendation.

Design Standards and Definitions

Refer to Fremont County Small Wastewater Regulations, January 2010. These are available in the Planning Department room 360 Fremont County Court House or you may phone (307)-332-1077 and also on the county web site, www.fremontcountygovernment.org, under Planning, downloads.

Attachment C

Record System and Reporting

Records

The Fremont County Planning Department shall maintain a system of records of all small wastewater permits issued under this Delegation Agreement. Both the original paper copy of all materials as well as a scanned electronic copy of documents will be maintained. Final permits will be archived by year issued and chronological permit number. All other application materials, documentation and reports on violations and failures, and correspondence will also be archived in the same manner.

Reporting

The Fremont County Planning Department will generate an annual report which will be made available to DEQ for review at any time.

AFFIDAVIT OF MARCEL LOPEZ

1. My name is Marcel Lopez. I am a Small Wastewater Specialist in the Fremont County Planning Department. I am over the age of eighteen. My business address is 450 N. 2nd Street, Room 360, Lander, Wyoming, 82520.

2. I have been employed as a Small Wastewater Specialist for 4 years. My duties include inspection of small wastewater systems and recommendation for the issuance of small wastewater permits by Fremont County.

3. To the best of my knowledge and experience, the Eastern Shoshone Tribe, the Northern Arapaho Tribe, nor the Federal Government has ever tried to exert jurisdiction in small wastewater matters involving property within the ceded area of the Wind River Indian Reservation, and none such entity has objected to the issuance or administration of small wastewater permits by the County.

FURTHER THE AFFIANT SAYETH NOT.

DATED this 29th day of December, 2014.


Marcel Lopez

STATE OF WYOMING)
) ss.
COUNTY OF FREMONT)

Subscribed and sworn to before me this 29th day of December, 2014 by Marcel Lopez.

Witness my hand and official seal.


Notary Public



My commission expires: September 30, 2018

TRANSFER STATION OPERATING AGREEMENT

THIS AGREEMENT is made and entered into by and between the Fremont County Solid Waste Disposal District, hereinafter referred to as "the District", of 52 Beebe Road, P.O. Box 1400, Lander, Fremont County, Wyoming, and the Northern Arapaho Tribe of P.O. Box 396, Fort Washakie, Wyoming 82514, and the Eastern Shoshone Tribe, of P.O. Box 538, Fort Washakie, Wyoming 82514, both federally recognized Indian tribes hereinafter collectively referred to as "the Tribes".

RECITALS

WHEREAS, the District was formed in 1979 pursuant to W.S. Section 18-11-101 et seq. to dispose of municipal solid waste and currently operates various landfills and transfer stations within Fremont County, Wyoming; and

WHEREAS, the Tribes, as federally recognized Indian tribes, with inherent rights of self-governance exercise rights of self-determination and enjoy a government-to-government relationship with the State of Wyoming and its political sub-divisions; and

WHEREAS, in 1996 the District agreed to operate four Tribally constructed and operated transfer stations ("Transfer Stations") which service the communities of Arapaho, Crowheart, Ethete and Ft. Washakie; and

WHEREAS, the Tribes desire to operate and manage the Transfer Stations in conjunction with its solid waste management program; and

WHEREAS, the District desires to have the Tribes operate the Transfer Stations on the terms and conditions stated herein and the Tribes desire to operate the Transfer Stations on the terms and conditions stated herein.

NOW THEREFORE, for and in consideration of the monies to be paid hereunder, the services to be rendered hereunder and the parties covenants and agreements as contained herein the parties agree as follows:

1. **Recitals.** The above said recitals are incorporated into and made a part of this agreement and are not mere factual recitals.

2. **Tribes' Responsibilities.** The Tribes hereby agree to operate and manage the Transfer Stations, and shall be responsible for the following at each site:

a. To provide all necessary equipment to properly equip each site for the receipt of solid waste;

b. To provide adequate staff to operate each site;

c. To set hours and days of operation at each site as the Tribes deem reasonable and prudent, but at a minimum of one day per week per site.

d. To maintain the Transfer Stations in compliance with applicable Tribal and Federal standards.

e. To accept appropriate waste at the Transfer Stations and transport it to a final disposal facility of their selection subject to the provisions in 4a.

f. To procure and maintain any permits or licenses that may be required to operate the Transfer Stations, solid waste management facilities, and transport.

g. The Tribes agree that fees at the Transfer Stations will not exceed the prevailing rate for all other transfer stations in Fremont County operated by the District.

3. **District's Responsibilities.** The District agrees to provide partial funding for the Tribes to operate the Transfer Stations and shall be responsible for the following:

a. To accept and dispose of acceptable municipal solid waste and construction and demolition debris the Tribes deliver the District's landfills or bale station ("Disposal Facilities").

b. To handle (through baling or otherwise) the delivered waste and to properly dispose of the same in the District Disposal Facilities.

c. To maintain scales for the weighing of the waste delivered by the Tribes.

d. To procure and maintain all permits and licensing to dispose of the accepted solid waste.

e. To dispose of acceptable municipal solid waste and construction and demolition waste from the Tribes, for the regular fee charged to other customers.

f. To invoice the Tribes on a monthly basis for the tipping fees incurred at the District's Disposal Facilities.

g. On a monthly basis provide the Tribes an accounting of all waste delivered to the District's Disposal Facilities.

h. The District will accept delivery of all segregated recyclable materials segregated by type of material from the Tribes, with recyclable materials being defined by the District's recycling program. Upon delivery the recyclables shall become the property of the District and processed and marketed by the District, with the District being entitled to retain all revenue from the sale of the recyclables.

i. Allow the Tribes' gate attendants and other personnel to attend the District's bi-annual solid waste training to ensure that only household, non-hazardous, non-liquid waste enters the Transfer Stations.

4. Use of District Disposal Facilities. If the Tribes choose to utilize the District's Disposal Facilities, then the following conditions of use apply:

a. The District may determine in advance of delivery which facility the waste is delivered to, however the District's determination shall not be arbitrary or unreasonably burden the Tribal solid waste program. The District's preference for delivery shall be communicated to the Tribes in writing.

b. All loads must be adequately covered to prevent scattering of debris during transportation.

c. The waste shall be properly sorted to ensure that only municipal solid waste and construction and demolition waste is delivered to the landfill.

d. The waste shall be delivered with the municipal solid waste, and the construction and demolition debris wastes delivered in separate containers and loads.

e. The Tribes are responsible to pay to the District the tipping fee at the Disposal Facility where waste is delivered at the rate established by the District and as currently existing and as shall be amended in the future. The tipping fee charged to the Tribes by the District shall be the same amount as charged to all other customers.

f. The District is not required to accept any material at the Disposal Facilities if disposal of the material would violate the District's Rules and Regulations.

5. Transition Period. To allow the Tribes time to acquire the necessary equipment to operate the Transfer Stations. The parties agree to a transition period during which the terms of this Agreement shall be in full force and effect, except that transportation of the waste collected at the Transfer Stations shall be provided by the District, as provided for under the parties' "Bridge Contract" dated December 14, 2012. The transition period shall be for 6 months or until the Tribes obtain the necessary equipment to transport the waste, whichever shall first occur. The Tribes will work diligently to acquire the equipment; however, if delivery of the equipment is delayed (i.e. on back order), the parties will confer and negotiate in good faith an extension of the transition period.

6. Term. The term of this agreement shall be for a period of 3 years, unless terminated prior to then as provided for herein. The term shall commence on July 1, 2013 and terminate on June 30, 2016, unless terminated sooner as provided for herein. Six months prior to termination of the Agreement each party shall notify the other of its intent to either continue with the Agreement or to not renew it. Upon termination, the parties shall negotiate a renewal upon such terms as the parties may agree upon if both parties agree to do so.

7. **Payment to Tribes.** The District agrees to pay the Tribes for the services described herein. During the first and second years of the primary term of this Agreement, the District shall pay to the Tribes the sum of \$250,000.00 per year, except that payment to the Tribes will be reduced by \$24,000.00 for each quarter or by \$8,000.00 for each month in which the District is responsible for transportation of waste from the Transfer Stations to a disposal facility. During the third year of the primary term of this Agreement, the District shall pay to the Tribes the sum of \$255,000.00.

Payments to the Tribes will be in advance and on a quarterly or monthly basis. The District may elect to withhold payment to the Tribes in an amount equal to any accrued and unpaid tipping fees due to the District. Furthermore, if the Tribes are more than 30 days delinquent on any invoice for tipping fees the District may deny the Tribes access to its disposal facilities.

8. **Continued Use of Equipment.** Under the Parties November 20, 1996 agreement the Tribes and the District agreed that the District would have use of certain equipment to transport waste from the Transfer Stations. The Parties agree that the District shall continue to have use of six of the waste containers and one truck for the duration of this Agreement or until the equipment becomes inoperable whichever occurs first. The District will be responsible for all costs associated with the use of the equipment it continues to use. All other equipment shall be returned to the Tribes at the end of the transition period.

9. **Independent Contractor.** The parties agree that in the performance of this Agreement the Tribes are acting as an independent contractor and the District shall not have any control as to the method, timing or sequence of the Tribes performance of its obligations hereunder.

10. **Termination.** This Agreement may be terminated by the mutual consent of the parties. Either party may unilaterally terminate this agreement for cause. If either party seeks to terminate this agreement for cause they must first provide to the other party sixty (60) days prior written notice setting forth the default. The other party shall have a period of thirty (30) days to cure the default. If default is cured within the thirty (30) day period, then the contract shall continue.

11. **Regulation at Transfer Stations.** Nothing in this agreement shall limit or expand, or be construed to limit or expand, the jurisdiction of the Tribes or District with respect to the management of the Transfer Stations or of the District landfills, including, but not limited to, enforcement powers and procedures available to the parties.

12. **Indemnification.** Each party to this Agreement shall assume the risk of liability arising from its own conduct. Neither party agrees to insure, defend or indemnify the other.

13. **Default and Dispute Resolution.** In the event of a default of any provision of this agreement or a dispute over the terms and provisions of this agreement, the parties agree to the following dispute resolution procedure:

a. Either party shall notify the other party, in writing, of the alleged dispute and/or default.

b. The parties shall, within thirty (30) days of service of the writing, as herein provided, meet and in good faith confer and attempt to resolve the default and/or dispute.

c. If the parties are not able to reach a resolution within sixty (60) days of the written notice then this Agreement shall terminate.

14. **Notice.** Any notice, demand or communication required or permitted under this agreement shall be in writing and shall be deemed to have sufficiently been given if personally served or delivered by commercial carrier, or sent certified or registered mail, return receipt requested and postage pre-paid, and addressed to the other party at the following addresses:

Fremont County Solid Waste
Disposal District
P.O. Box 1400
Lander, Wyoming 82520

Northern Arapaho Tribe
P.O. Box 396
Fort Washakie, Wyoming 82514

Eastern Shoshone Tribe
P.O. Box 538
Fort Washakie, Wyoming 82514

Joint Business Council
P.O. Box 217
Fort Washakie, Wyoming 82514

The District shall also transmit a copy of any notice, demand or communication to Director, Wind River Environmental Quality Commission, P.O. Box 217, Fort Washakie, Wyoming 82514.

15. **No Waiver.** Except as expressly provided in this agreement, no delay or omission to exercise any right, power, or remedy accruing under this agreement shall impair such right, power, or remedy, nor shall it be construed to be a waiver of or acquiescence in a breach of or default under this agreement. The parties specifically and affirmatively agree not to construe the conduct, statements, delay, or omission of any other party as altering in any way the parties' duties and responsibilities as defined in this agreement. Any waiver, permit, or approval of any breach or default under this agreement must be in writing, and, the parties hereby agree that neither will raise waiver nor estoppels as an affirmative defense so as to limit or negate the clear language and intent of this agreement. All remedies, either under this agreement, by law, or otherwise afforded to any party shall be cumulative, not alternative.

16. **No Assignment.** No party hereto shall assign or otherwise transfer any of its benefits or responsibilities contained in this agreement without first obtaining the written authorization of the other party. The Tribes shall not assign or pledge the payments made to them hereunder, without the prior written consent of the District.

17. **Sovereign Immunity.** Nothing in this Agreement constitutes or should be construed to constitute a waiver of sovereign immunity. By entering into this contract neither party waives its Governmental Immunity, as provided by any applicable law including but not limited to W.S.

Section 1-39-101 et seq. Further, each party fully retains all immunities and defenses provided by law with regard to any action, whether in tort, contract or any other theory of law based on this contract. Designations of venue, choice of law and similar provisions should not be construed as a waiver of sovereign immunity. Any ambiguity in this Agreement shall be construed in favor of sovereign immunity. This contract is entered into by the parties for their sole benefit, and is not intended to be for the benefit of any other third party or entity.

18. **Entire Agreement.** There is no agreement or promise on the part of any party to this agreement to do or omit to do any act or thing not herein mentioned. All prior agreements, negotiations and promises between or among the parties in any combination, whether oral or written, confidential or public, express or implied, are hereby superseded and replaced in full by this agreement, which constitutes the entire agreement between the parties and may not be effectively amended, changed, modified, or altered without the written consent and agreement of all parties.

19. **Time of the Essence.** Time limitations contained herein, or provided for hereby, are of the essence of this agreement.

20. **Mutual Benefit.** It is mutually agreed that this agreement shall be binding upon the parties hereto and their successors and approved assigns of the parties hereto. The District hereby represents that the term of this agreement is of benefit to the District to allow for future budgetary concerns and for planning purposes.

21. **Effective Date.** The effective date of this agreement shall be July 1, 2013.

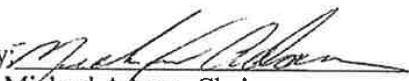
Eastern Shoshone Tribe

Northern Arapaho Tribe

By: 
Darwin St. Clair, Jr., Chairman

By: 
Darrell O'Neal, Chairman for:

Fremont County Solid Waste
Disposal District

By: 
Michael Adams, Chairman