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ATTORNEYS FOR BASIN ELECTRIC
POWER COOPERATIVE

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Jim Ruby, Executive Secretary
Environmental Quality Council

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

In the Matter of:)
Basin Electric Power Cooperative) Docket No. 10-2802
Air Quality Permit No. MD-6047)
BART Permit: Laramie River Station)

BASIN ELECTRIC'S ANNEX OF UNDISPUTED FACTS

Basin Electric Power Cooperative (Basin Electric) submits the following as undisputed facts in support of its Motion for Summary Judgment on this matter:

1. After DEQ's June 14, 2006, notification that LRS is subject to BART, and as required by the Department of Environment Quality's (DEQ) BART regulations, Basin Electric timely submitted a BART permit application for its Laramie River Station (LRS) on March 5, 2007. Basin Electric submitted additional information to DEQ in support of the application between February 15, 2008 and March 16, 2009. On May 28, 2009, DEQ issued its BART analysis with proposed permit conditions for the LRS BART permit. DEQ BART Application Analysis, AP-6047, attached as Exhibit A to the Memorandum brief supporting Basin Electric's Motion for Summary Judgment (Memorandum).

2. DEQ determined in its BART Application Analysis that new low NO_x burners with overfire air is BART for NO_x control for Units 1-3 at the LRS. After consideration of the five statutory factors for BART, DEQ concluded that a NO_x control level of 0.23 lb/MMBtu on a 30-day rolling average, equal to EPA's established presumptive limit, was justified. DEQ determined that selective catalytic reduction (SCR) for NO_x control for Units 1-3 at the LRS was not BART. DEQ also stated it was requiring the installation of additional NO_x controls under the Long-term Strategy of the Wyoming Regional Haze State Implementation Plan. Exhibit A to the Memorandum at 42-43.

3. DEQ published notice of the proposed permit on June 3, 2009 and provided for public comment, ending on August 6, 2009. A public hearing on the proposed permit was held on August 6, 2009. DEQ issued the final LRS BART permit which was received by Basin Electric by mail on January 11, 2010. Permit No. MD-6047, BART Permit for the Laramie River Station, dated December 31, 2009 (LRS BART permit), attached as Exhibit B to the Memorandum.

4. Condition 16 of the LRS permit requires Basin Electric to submit future applications for the installation of additional add-on NO_x controls on one LRS Unit by December 31, 2018 and on a second LRS Unit by December 31, 2023. This requirement was prescribed by DEQ not as BART but is said in Condition 16 to be imposed pursuant to the Long-term Strategy of the Wyoming Regional Haze State Implementation Plan. Condition 16 also required Basin Electric's applications to "address each add-on NO_x control as a system of continuous emissions reduction achieving the lowest viable NO_x emission, not to exceed a

maximum of 0.07 lb/MMBtu on a 30-day rolling average as measured by a certified CEM.”

Exhibit B to the Memorandum at 4.

5. DEQ issued for public comment, on August 25, 2009, a draft Wyoming State Implementation Plan for Regional Haze (Regional Haze SIP) that included consideration of many sources and factors for purposes of proposing Reasonable Progress Goals and a Long-term Strategy. This draft included provisions for the LRS similar to the provisions of Condition 16 of the LRS BART permit. This draft is located on DEQ’s website at deq.state.wy.us/aqd/308%20SIP/308%20SIP%20Draft8-25-09.pdf.

6. At the time DEQ issued the LRS BART permit, the draft Regional Haze SIP had not been approved or adopted by DEQ, the DEQ Director, the Wyoming Environmental Quality Council, the Governor or by the EPA. No final action has been taken to adopt the Regional Haze SIP for Wyoming or the Long-term Strategy provisions thereof. No Wyoming SIP authorizes additional NO_x controls to be installed on any Unit at the LRS.

7. The LRS BART permit was issued pursuant to WAQS&R Chapter 6, Sections 2 and 9. Exhibit B to Memorandum at 1. Chapter 6, Section 2 sets forth the general rules for permits for construction, modification and operation of emission sources, and Section 9 sets forth the specific rules for BART permits. Neither Section includes any provision or authority for issuing permits to implement any Long-term Strategy for Regional Haze, or for imposing Long-term Strategy emission limits in BART permits. DEQ cited no provision in Wyoming law that authorizes it to establish Long-term Strategy emission limits by means of a permit (Exhibits A and B to Memorandum), and there is no mention of Long-term Strategy permits in Wyoming statutes or regulations.

Dated June 30, 2010.



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