DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, OMAHA DISTRICT
WYOMING REGULATORY OFFICE
2232 DELL RANGE BOULEVARD, SUITE 210
CHEYENNE WY 82009-4942

REPLY TO
ATTENTION OF

August 10, 2010

Wyoming Regulatory Office

Mr. John W. Cash
Lost Creek ISR, LLC
5880 Enterprise Drive, Suite 200
Casper, Wyoming 82609

Dear Mr. Cash:

This letter is in response to a request we received from you on May 17, 2010, for a jurisdictional determination concerning property southwest of Bairoil. The Lost Creek Permit Area is approximately 4,254 acres and is located in Sections 16, 17, 18, 19, NW ¼ and NE ¼ of Section 20, SW ¼ and NW ¼ of Section 30, Township 25 North, Range 92 West; and Sections 24, 25, and SW ¼ and SE 1/4 of Section 13, Township 25 North, Range 93 West, Sweetwater County, Wyoming.

The U.S. Army Corps of Engineers regulates the placement of dredged and fill material into wetlands and other waters of the United States as authorized primarily by Section 404 of the Clean Water Act (33 U.S.C. 1344). The term "waters of the United States" has been broadly defined by statute, regulation, and judicial interpretation to include all waters that were, are, or could be used in interstate commerce such as streams, reservoirs, lakes and adjacent wetlands. The Corps regulations are published in the *Code of Federal Regulations* as 33 CFR Parts 320 through 332. Information on Section 404 program requirements in Wyoming can be obtained from our web site at https://www.nwo.usace.army.mil/html/od-rwy/Wyoming.htm

We have reviewed the information extracted from the *Lost Creek Project Permit to Mine Application.* Based on the documentation provided as well as other information at our disposal, we have determined that Figure D11-1 titled *Potential Wetlands Delineated by the National Wetland Inventory* provides an accurate depiction of potential wetlands and other waters within the permit area defined above.

On June 5, 2007, our Headquarters in Washington D.C. (HQUSACE) implemented guidance that requires an extensive evaluation and coordination procedure before exerting jurisdiction over many streams and wetlands. The guidance was based primarily on a ruling by the U.S. Supreme Court on June 19, 2006, in the case of *Rapanos et ux., et al. v. United States* (Nos. 04-1034 and 04-1384). We initiated coordination with the U.S. Environmental Protection Agency (USEPA) and HQUSACE on July 19, 2010. The USEPA, Region 8 deferred concurrence with our recommendations as of August 9, 2010. HQUSACE and HQUSEPA did not initiate any formal discussions thereby waiving the opportunity to intervene on August 9, 2010.

We have determined that the two impounded water bodies are "isolated"; they and all ephemeral and intermittent waterways within the review area have no surface connection to a traditional navigable water. These waters occur within a closed hydrologic basin and do not provide habitat suitable for migratory birds or support any form of interstate commerce. **Therefore, all waters within the permit area do not contain any areas that meet the definition of waters of the United States as defined at 33 CFR Part 328.3(a).**

In the March 28, 2000, edition of the *Federal Register* (Vol. 65, No. 60), the Corps implemented an administrative appeals process for jurisdictional determinations. This letter serves as an approved jurisdictional determination. The landowner and other affected parties may appeal any determination to the Northwestern Division Appeals Officer, Mr. David Gesl, by obtaining a Notification of Administrative Appeal Options and Process (NAO) form at our web site. Section "D" of the NAO explains the procedures for appeal. The NAO form must be submitted to Mr. Gesl at the address shown on the NAO form prior to **October 8, 2010**, or forfeit the right to an administrative appeal.

As a result of this analysis, we have determined that Department of the Army authorization is not required for modification of the "isolated" waters within the review area, because they do not require any discharges of fill material into waters of the United States. This determination does not eliminate the requirement to obtain any other applicable federal, state, tribal, or local permits that may be required.

Thank you for your interest in cooperating with requirements of the U.S. Army Corps of Engineers' regulatory program. This verification is valid for a period of 5 years, until **August 10, 2015**, unless new information warrants a modification. Please contact Ms. Paige Wolken at (307) 772-2300 and reference file NWO-2010-01530 if you have any questions.

Sincerely,

for Matthew A. Bilodeau
Program Manager
Wyoming Regulatory Office

Copies Furnished:

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The Omaha District, Regulatory Branch, Wyoming Regulatory Office is committed to providing quality and timely service to our customers. In an effort to improve customer service, please take a moment to complete a Customer Service Survey found on our web site at https://www.nwo.usace.army.mil/html/od-rwy/survey.htm Paper copies of the survey are also available upon request for those without Internet access.