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IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF WYOMING,  
IN AND FOR THE COUNTY OF NATRONA

POWDER RIVER BASIN RESOURCE  
COUNCIL, WYOMING OUTDOOR  
COUNCIL, EARTHWORKS, and  
CENTER FOR EFFECTIVE  
GOVERNMENT (formerly OMB  
WATCH),

Petitioners,

v.

WYOMING OIL AND GAS  
CONSERVATION COMMISSION,

Respondent,

Docket No. 94650-C  
Judge: Hon. Catherine E. Wilking

**STIPULATED SETTLEMENT  
AGREEMENT**

**FILED**  
JAN 14 2015

Gen Tuma Clerk of District Court

By: **BRANDY PORTER**  
Deputy

and  HALLIBURTON ENERGY SERVICES, INC.,  Respondent-Intervenor.	
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Petitioners Powder River Basin Resource Council, Wyoming Outdoor Council, Earthworks, and Center for Effective Government (collectively “Petitioners”); Respondent Wyoming Oil and Gas Conservation Commission (“WOGCC”); and Respondent-Intervenor Halliburton Energy Services, Inc. (“Halliburton”), (collectively “the Parties”) hereby enter into this Settlement Agreement for the purpose of settling this lawsuit without further judicial proceedings. The Parties hereby state as follows:

WHEREAS, Petitioners on March 22, 2012, filed this lawsuit to challenge WOGCC’s denial of their request under the Wyoming Public Records Act (“WPRA”), Wyo. Stat. §§ 16-4-201 to 16-4-205, for access to certain information concerning chemical ingredients of well stimulation fluids used in Wyoming;

WHEREAS, Petitioners’ lawsuit challenged WOGCC’s determinations to provide confidentiality protection to the chemical ingredient information at issue as trade secrets pursuant to Wyo. Admin. Code OIL GEN Ch. 3 § 45 and the WPRA;

WHEREAS, Petitioners’ lawsuit specifically challenged the following determinations made by WOGCC in response to the following letters (identified by administrative record designation) that sought to justify confidentiality protection under Wyo. Admin. Code OIL GEN Ch. 3 § 45 (“the Challenged Justifications”): TS2010\_2 (Halliburton), AR ATS 000010-19; TS2010\_3 (Halliburton), AR ATS 000020-29;

TS2010\_4 (CESI), AR ATS 000030-33; TS2010\_5 (CESI), AR ATS 000034-37;  
TS2010\_6 (CESI), AR ATS 000038-41; TS2010\_7 (CESI), AR ATS 000042-45;  
TS2010\_8 (CESI), AR ATS 000046-49; TS2010\_10 (Halliburton), AR ATS 000061-70;  
TS2010\_11 (Halliburton), AR ATS 000071-80; TS2010\_12 (BJ Services), AR ATS  
000081-93; TS2010\_13 (Nalco), AR ATS 000094-103; TS2010\_14 (CESI), AR ATS  
000104-09; TS2010\_15 (Core), AR ATS 000110-18; TS2010\_16 (Halliburton), AR ATS  
000120-69; TS2010\_17 (BJ Services), AR ATS 000170-81; TS2010\_18 (CESI), AR  
ATS 000182-85; TS2011\_2 (Nalco), AR ATS 000193-96; TS2011\_3 (Halliburton), AR  
ATS 000197-252; TS2011\_4 (SNF), AR ATS 000253-56; TS2011\_5 (Halliburton), AR  
ATS 000257-76; TS2011\_7 (CESI), AR ATS 000285-88; TS2011\_8 (CESI), AR ATS  
000289-92; TS2011\_9 (Nalco), AR ATS 000294-97; TS2011\_10 (Baker Hughes), AR  
ATS 000298-303; TS2011\_11 (Baker Hughes), AR ATS 000304-09; TS2011\_14 (CESI),  
AR ATS 000325-29; TS2011\_16 (CESI), AR ATS 000337-40; TS2011\_18  
(Halliburton), AR ATS 000350-79; TS2011\_20 (CESI), AR ATS 000385-91; TS2011\_21  
(CESI), AR ATS 000392-404; TS2011\_24 (Halliburton), AR ATS 000439-49;  
TS2011\_26 (Baker Hughes), AR ATS 000460-70; TS2011\_27 (Halliburton), AR ATS  
000471-90; TS2011\_28 (Baker Hughes), AR ATS 000491-501; TS2011\_29 (CESI), AR  
ATS 000502-15; TS2011\_30 (Champion), AR ATS 000518-25; TS2012\_1 (CESI), AR  
ATS 000540-44; TS2012\_2 (Baker Hughes), AR ATS 000545-60.

WHEREAS, the Seventh Judicial District Court, Natrona County, issued an order  
on May 15, 2012, granting Halliburton's motion to intervene as a respondent;

WHEREAS, that Court on March 21, 2013, issued an order and judgment rejecting Petitioners' claims and affirming the challenged WOGCC decisions;

WHEREAS, Petitioners appealed that order to the Wyoming Supreme Court on April 16, 2013;

WHEREAS, the Wyoming Supreme Court issued an opinion on March 12, 2014, and a mandate on March 28, 2014, reversing the judgment of the Seventh Judicial District Court, Natrona County, and remanding this case for further proceedings consistent with the Supreme Court's opinion; and

WHEREAS, the Parties, through their authorized representatives, and without any admission or adjudication of the issues of fact or law, have reached a settlement resolving the claims in this case;

THEREFORE, the Parties enter this Settlement Agreement and stipulate and agree as follows:

1. Within seven (7) days of the effective date of this Settlement Agreement, WOGCC shall adopt and thereafter apply the form and guidelines attached as Exhibits A and B to this Settlement Agreement (the "Form" and "Guidelines") to govern applications for the provision of confidentiality protection and WOGCC's determinations regarding such applications pursuant to Wyo. Admin. Code OIL GEN Ch. 3 § 45. Contemporaneous with its adoption of the Form and Guidelines, WOGCC shall notify the public and oil and gas owners, operators, and service companies operating in Wyoming of its adoption of the Form and Guidelines and shall post the Form and Guidelines on its public website. WOGCC shall not revise, amend, modify, withdraw, or supersede the

Form and Guidelines unless it first provides written notice of any such action to Petitioners and Halliburton at least 30 days prior to implementing any such action.

2. Within seven (7) days of WOGCC's adoption of the Form and Guidelines as set forth in paragraph 1, supra, WOGCC shall notify the owners, operators, and/or service companies who submitted the Challenged Justifications that they are required to re-submit their Challenged Justifications in conformance with the Form and Guidelines. The date upon which WOGCC issues such notification shall be termed the "Notification Date." The schedule governing such re-submissions and WOGCC's determinations regarding the re-submitted requests for confidentiality protection shall be as follows:

a. WOGCC shall require all such owners, operators, and/or service companies except Halliburton to re-submit their Challenged Justifications within 90 days of the Notification Date.

b. Halliburton submitted ten (10) of the Challenged Justifications, which collectively seek confidentiality protection for chemical ingredients in 24 products. Halliburton shall re-submit applications for confidentiality protection for six (6) such products within 90 days after the Notification Date, for another six (6) such products within 180 days after the Notification Date, for another six (6) such products within 270 days after the Notification Date, and for the final six (6) such products within one year after the Notification Date.

c. WOGCC shall issue new determinations regarding requests for confidentiality protection set forth in any re-submissions of the Challenged Justifications within 90 days of receiving such a re-submission. WOGCC shall notify those owners,

operators, and/or service companies who fail to make a timely re-submission pursuant to the schedule set forth in this Paragraph 2 that the product(s) addressed in the omitted re-submission are not authorized for use in Wyoming oil and gas operations.

3. Upon approval of this Settlement Agreement by the Court, Petitioners' lawsuit shall be dismissed with prejudice, with each party to bear its own fees and costs, provided that nothing in this Settlement Agreement shall prejudice Petitioners' right to challenge any determination made by WOGCC upon re-submission of the Challenged Justifications as set forth in Paragraph 2, supra, or any other determination made by WOGCC under Wyo. Admin. Code OIL GEN Ch. 3 § 45 and/or the WPRA after the effective date of this Settlement Agreement.

4. None of the provisions or obligations of this Settlement Agreement shall become binding and effective unless and until the Court enters an order approving the terms of this Settlement Agreement. The effective date of this Settlement Agreement shall be the date upon which the Court enters such an order. Notwithstanding the dismissal of this action pursuant to paragraph 3, supra, the Court shall retain jurisdiction to enforce the terms of this Settlement Agreement upon motion by any of the Parties.

5. The terms of this Settlement Agreement constitute the entire agreement of the Parties with regard to Petitioners' claims set forth in the above-captioned case, and no statement, agreement or understanding, oral or written, with regard to such claims which is not contained in this Settlement Agreement shall be recognized or enforced. The Parties shall maintain the confidentiality of all documents and communications, oral or written, exchanged in the course of negotiating this Settlement Agreement.

6. This Settlement Agreement applies to the Parties and to their successors, agents, and assignees.

7. The undersigned representatives of each party certify that they are fully authorized by the party they represent to agree to the terms of this Settlement Agreement.

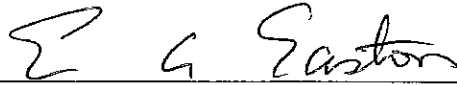
DATED this 14 day of January, 2015.

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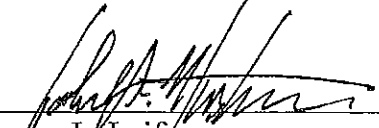
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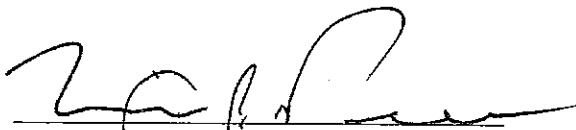
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6. This Settlement Agreement applies to the Parties and to their successors, agents, and assignees.

7. The undersigned representatives of each party certify that they are fully authorized by the party they represent to agree to the terms of this Settlement Agreement.

DATED this 12<sup>th</sup> day of January, 2015.



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# **EXHIBIT A**



## **EXHIBIT B**

WYOMING OIL AND GAS CONSERVATION COMMISSION  
Office of State Oil and Gas Supervisor  
PO Box 2640  
Casper WY 82602

WOGCC Trade Secret/CCI Guidelines

**I. Introduction**

WOGCC Rule Chapter 3, Section 45, requires an Owner, Operator, or service company proposing to conduct well stimulation in Wyoming to submit detailed information about the proposed stimulation fluid(s). If an Owner/Operator or service company demonstrates that specific information about the stimulation fluid's ingredients constitutes "trade secrets, privileged information [or] confidential commercial, financial, geological or geophysical data" as those terms are defined under Wyo. Stat. Ann. § 16-4-203(d)(v), the Wyoming Public Records Act (WPRA), the Supervisor will withhold that information from public disclosure. The company requesting confidentiality must provide adequate documentation justifying any confidentiality request, consistent with the policies below. The WOGCC will make the final administrative decision on all confidentiality requests and reserves the right to request additional substantiating information from the company requesting confidentiality, as needed.

**II. Format**

The WOGCC will accept disclosure of well stimulation fluid ingredient information in two formats: 1) a list of each chemical additive identified by product name and additive type (e.g., acid, biocide, breaker, crosslinker) with the proposed rate or concentration for the additive and for each additive the chemical compound name and the Chemical Abstracts Service (CAS) number for each ingredient in the additive; or 2) use of a "systems approach" format that does not link individual ingredients to the fluid additives of which they are a part, *i.e.*, by submitting a list of all chemical compound names and associated CAS numbers for the ingredients in the proposed stimulation fluid—organized alphabetically or by relative concentration— separately from the list of additive types (e.g., acid, biocide, breaker). The WOGCC will also accept a format that combines elements of these two approaches, *e.g.*, a format that lists some but not all of the ingredients separately from the additives in which they are found.

**III. Requirements for Substantiating Confidentiality Requests for Trade Secrets or Confidential Commercial Information.**

If you believe that disclosure of the identity of an ingredient in an additive (including the chemical compound name and CAS number) will reveal trade secrets or confidential commercial information which should be exempt from public disclosure, you may request that the WOGCC Supervisor withhold specific information from public disclosure pursuant to Chapter 3, Section 45(f) and the Wyoming Public Records Act, W.S. 16-4-2013(d). The WOGCC has a duty to provide interested members of the public copies of documents submitted by Owners/Operators and/or service companies unless the WOGCC determines that the information is exempt from disclosure under the Wyoming Public Records Act. Accordingly, you must clearly label what information you seek to have withheld, including any supporting documents submitted with your

confidentiality request.

If you believe that any of the information you are submitting to substantiate your confidentiality request is itself exempt from public disclosure because it constitutes “trade secrets, privileged information [or] confidential commercial, financial, geological or geophysical data” as those terms are defined under Wyo. Stat. Ann. § 16-4-203(d)(v), the Wyoming Public Records Act (WPRA), you should submit a second version of the relevant document(s) that redacts the specific information that you believe should be withheld from public disclosure. If the WOGCC determines that the specific information at issue satisfies the WPRA standards for confidentiality protection, it will post only the redacted version of the relevant document(s) on its public website and maintain the unredacted version in its confidential files.

To demonstrate that the information for which confidentiality is sought constitutes trade secrets or confidential commercial information, you must respond to the following questions and provide the information specified and any supporting documentation (such as previous confidentiality determinations):

1. To your knowledge, does the ingredient identity for which you seek confidentiality protection and its use in an additive of the type at issue in your request (e.g., surfactant, biocide, breaker) appear in any public source? In answering this question, please describe the following:
  - a. Has the identity of the ingredient (including the chemical compound name and CAS number) and its use in an additive of the type at issue in your request (e.g., surfactant, biocide, breaker) been previously disclosed via the FracFocus database by you or, to your knowledge, anyone else?
  - b. Has the identity of the ingredient and its use in an additive of the type at issue in your request (e.g., surfactant, biocide, breaker) been publicly disclosed by you or, to your knowledge, anyone else
    - i. pursuant to any federal, state, or local law or regulation?
    - ii. in professional trade publications?
    - iii. through any other media or publications available to the public or your competitors?

In responding to these questions, you must take steps that are reasonable and appropriate under the circumstances to determine the knowledge of relevant individuals within the company. You must provide a description of the investigation you undertook to respond to these questions.

2. To what extent is the identity of the ingredient (including its use in the additive) known within the company and what steps have you taken to safeguard the information? Please describe in detail how this information is housed in your company and what steps your employees, officers, agents, and directors take to prevent disclosure of the information to parties outside of your company.
3. Has any other regulatory body (federal, state, tribal, or local) determined that the ingredient identity (including its use in the additive) is not entitled to protection from public disclosure as a trade secret or confidential commercial information? If so, provide a copy of the agency's determination, along with any explanation as to why the Commission should not make a similar determination. Provide any other information concerning prior requests for confidentiality and/or regulatory body determinations you believe is relevant to the Commission's determination.
4. How is the identity of the ingredient commercially valuable to the company? In answering this question, please describe why the use of the ingredient in the type of additive is not common knowledge in the industry, including any novel or unusual aspects of the chemical or the use of the chemical in this application. Also provide any description of the efforts undertaken in developing the product you believe is relevant.
5. Describe the ease or difficulty with which the formula for the additive product could be determined from public disclosure of the ingredient identity. Specifically, explain why use of the "systems approach" format would not adequately protect your proprietary interest.

Based on the information supplied, and such other information as the WOGCC Supervisor may request, the Supervisor will determine whether the information at issue is exempt from disclosure under the WOGCC rules and the WPRA. In making this determination, the Supervisor may consult relevant external sources of information, including the FracFocus database.

In the event that the Supervisor determines that specific chemical compound information and associated CAS number(s) are exempt from disclosure, the Supervisor will make available to the public the chemical family name in lieu of the specific chemical compound name and CAS number.

#### **IV. Required Updating**

In addition, in the event that confidentiality protection is granted, you must submit to the WOGCC Supervisor every three (3) years an updated statement attesting that the chemical compound information and CAS number(s) at issue have not been disclosed to the public in any other forum and provide any new information in your possession that is relevant to the confidentiality claim.

#### **V. Applicable Statutes and Rules**

- A. OGCC Rules and Regulations, Chapter 3, Section 45(d)

(d) The Owner or Operator shall provide detailed information to the Supervisor as to the base stimulation fluid source. The Owner or Operator or service company shall provide to the Supervisor, for each stage of the well stimulation program, the chemical additives, compounds and concentrations or rates proposed to be mixed and injected, including:

- (i) Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant);
- (ii) The chemical compound name and Chemical Abstracts Service (CAS) number shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is aluminum persulfate, or the proppant is silica or quartz sand, and so on for each additive used);
- (iii) The proposed rate or concentration for each additive shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion);
- (iv) The Owner or Operator or service company may also provide a copy of the contractor's proposed well stimulation program design including the above detail;
- (v) The Supervisor may request additional information under this subsection prior to the approval of the Application for Permit to Drill (Form 1) or of the Sundry Notice (Form 4);
- (vi) The Supervisor retains discretion to request from the Owner or Operator and/or the service company, the formulary disclosure for the chemical compounds used in the well stimulation(s).

(e) The Owner or Operator shall provide a detailed description of the proposed well stimulation design, which shall include:

- (i) The anticipated surface treating pressure range;
- (ii) The maximum injection treating pressure;
- (iii) The estimated or calculated fracture length and fracture height.

(f) Upon prior request via Application for Permit to Drill (Form 1), and/or a comprehensive drilling/completion/recompletion plan, or by Well Completion Report (Form 3), or by Sundry Notice (Form 4), and/or by written letter to the Supervisor justifying and documenting the nature and extent of the proprietary information, confidentiality protection shall be provided consistent with WYO. STAT. ANN. § 16-4-203(d)(v) of the Wyoming Public Records Act for the following records: "trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person."

#### B. Wyoming Public Records Act

### **§ 16-4-202. Right of inspection; rules and regulations; unavailability**

(a) All public records shall be open for inspection by any person at reasonable times, during business hours of the state entity or political subdivision, except as provided in this act or as otherwise provided by law, but the official custodian of any public records may make rules and regulations with reference to the inspection of the records as is reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

**§ 16-4-203. Right of inspection; grounds for denial; access of news media; order permitting or restricting disclosure; exceptions**

(a) The custodian of any public records shall allow any person the right of inspection of the records or any portion thereof except on one (1) or more of the following grounds or as provided in subsection (b) or (d) of this section:

(i) The inspection would be contrary to any state statute;

(ii) The inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(iii) The inspection is prohibited by rules promulgated by the supreme court or by the order of any court of record.

\* \* \* \* \*

(d) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law:

\* \* \* \* \*

(v) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person . . .

**C. Case law**

Under the WPRA, a trade secret is defined as “a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort, with a direct relationship between the trade secret and the productive process.” *Powder River Basin Res. Council v. Wyo. Oil & Gas Conservation Comm’n*, 2014 WY 37, ¶ 43, 320 P.3d 222 (2014). Information qualifies as confidential commercial information if its disclosure is likely “(1) to impair the government’s future ability to obtain necessary information; or (2) to cause substantial harm to the competitive position of the persons providing the information.” *Sublette Cnty. Rural Health Care Dist. v. Miley*, 941 P.2d 1101, 1102 (Wyo. 1997) (citation omitted).



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IN AND FOR THE COUNTY OF NATRONA

POWDER RIVER BASIN RESOURCE  
COUNCIL, WYOMING OUTDOOR  
COUNCIL, EARTHWORKS, and  
CENTER FOR EFFECTIVE  
GOVERNMENT (formerly OMB  
WATCH),

Petitioners,

v.

WYOMING OIL AND GAS  
CONSERVATION COMMISSION,

Respondent,

Docket No. 94650-C  
Judge: Hon. Catherine E. Wilking

**JOINT MOTION FOR APPROVAL  
OF STIPULATED SETTLEMENT  
AGREEMENT AND DISMISSAL**

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and

HALLIBURTON ENERGY SERVICES,  
INC.,

Respondent-Intervenor.

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Petitioners Powder River Basin Resource Council, Wyoming Outdoor Council, Earthworks, and Center for Effective Government; Respondent Wyoming Oil and Gas Conservation Commission; and Respondent-Intervenor Halliburton Energy Services, Inc., (collectively, “the Parties”) hereby jointly move this Court to approve the attached Stipulated Settlement Agreement. The Parties further jointly move this Court to dismiss this case pursuant to the terms of the attached Stipulated Settlement Agreement. A proposed order accompanies this motion.

Respectfully submitted this 14<sup>th</sup> day of January, 2015.

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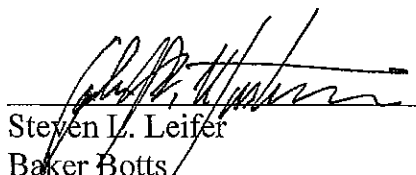
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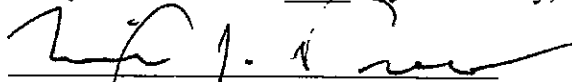


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Respectfully submitted this 12<sup>th</sup> day of January, 2015.



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