

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

**FILED**

APR 30 2007

IN THE MATTER OF THE APPEAL OF )  
THE COPPERLEAF SUBDIVISION WATER )  
SUPPLY, TREATMENT, STORAGE, AND )  
BOOSTER PUMPING SYSTEMS, )  
Permit No. 06-274RR/Reference No. 06-236RR )

Terri A. Lorenzon, Director  
Environmental Quality Council

Docket No. 06-3814

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**BRIEF IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS**

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COMES NOW, the Respondent, Worthington Group of Wyoming, LLC (formerly known as Northfork Communities, Inc.), by and through counsel, Laurence W. Stinson of Bonner Stinson, P.C., and hereby respectfully submits its Brief In Support of Its Motion To Dismiss the Petitioner, Northfork Group's, Petition for Review. In support hereof, Respondent states as follows:

**I. INTRODUCTION**

This petition for review was filed by the Northfork Group, a non-profit corporation apparently comprised of just two individuals who object to the development of a world class residential community near their properties. This petition for review is just one of the four or more administrative appeals filed in an effort to thwart the development of the Copperleaf Subdivision. Today, Petitioners voice their offense at the Director of the Department of Environmental Quality for his issuance of permit no. 06-274RR, permitting the Worthington Group to install a water infiltration gallery, to drill three water supply wells and construct a booster pump system. Notably, the petitioners, or its members, live approximately one-half mile or more from the permitted infiltration system of which they complain and Worthington submits that they do not have standing, right or any claim to the

groundwater from which the water wells will draw. Petitioner's have certainly not alleged any colorable claim to such water.

It is well established that in order to pursue an appeal of an administrative action, the appellant must have standing to do so. Because the Petitioners are not "aggrieved" individuals, they lack standing to pursue this petition for review. Accordingly, this contested case must be dismissed.

## **II. APPLICABLE LAW AND ANALYSIS**

Petitions for review before the Wyoming Environmental Council are controlled by Wyo. Stat. § 101 et seq. and the Wyoming Rules and Regulations for the Department of Environmental Quality.

Section 13 of the Rules and Regulations states in part: "Any person believing himself aggrieved by a determination made by the Administrator or his designee following an informational proceeding, hearing or conference and who is otherwise entitled thereto, may upon filing a petition or complaint with the Council, obtain a full hearing or review upon the merits, which matter shall be tried de novo."

Wyo. Stat. § 35-11-103 (a)(vii) defines "aggrieved party" as "any person named or admitted as a party or properly seeking or entitled as of right to be admitted as a party to any proceeding under this act because of damages that person may sustain or be claiming because of his unique position in any proceeding held under this act."

Petitioners' interest in the issuance of permit no. 06-274RR is not different from the interests of other citizens at large. Without showing distinct and peculiar harm, Messrs. Johnson and Hozwa lack standing to express their dissatisfaction with Respondent's proposed development of a water supply, treatment and storage system. Other than their general distaste for new development in Park County,

Petitioners do not have any direct, personal interest in the construction of this water supply and treatment system. The Petition for Review underscores this point. Petitioners' complaints are all procedural, and nothing in the Petition reflects why Petitioners have a recognizable interest in the issuance of the permit or how they are uniquely and adversely affected by the issuance of the permit. *See, Hoke v. Moyer*, 865 P.2d 624, 628 (Wyo. 1993).

A potential litigant must show injury or potential injury by alleging a perceptible, rather than a speculative, harm resulting from the agency action. *Fosters, Inc. v. City of Laramie*, 718 P.2d 868, 872 (Wyo. 1986). The interest must generally be substantial, immediate and pecuniary. A future, contingent, or merely speculative interest is ordinarily not sufficient. *L Slash X Cattle Co, Inc. v. Texaco, Inc.*, 623 P.2d 764, 769 (Wyo. 1981).

The Petitioner's procedural complaints are indistinguishable from those which any citizen of Wyoming could make. They have no personal stake in the outcome, nor do they claim any injury derived by the issuance of this permit. *See, Jolley v. State Loan and Inv. Bd.*, 2002 WY 7, ¶ 8, 38 P.3d 1073 (Wyo. 2002). They are unable to establish that they are adversely affected- *in fact* by the issuance of this permit. *Id.* Without specific, articulable facts demonstrating their individual harm from the issuance of the permit, Petitioner's complaints must be dismissed. *See, also, Matter of Various Water Rights in Lake DeSmet Reservoir, Bd. Of Control*, Docket No. II-77-2-1, 1981, 623 P.2d 764 Administrative Law and Procedure 668.

### **III. CONCLUSION.**

The Petitioners may be "angry" about the Copperleaf subdivision, but that hardly provides a legal complaint against the DEQ or anyone else in this matter. Unless and until the Petitioner's can show actual harm they cannot show standing

to make such a complaint. Worthington respectfully requests that the Environmental Quality Council dismiss this action.

DATED this 26<sup>th</sup> day of April, 2007.



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**LAURENCE W. STINSON**  
BONNER STINSON, P.C.  
128 East Second  
P.O. Box 799  
Powell, Wyoming 82435  
Attorney for The Worthington Group  
of Wyoming, LLC

**CERTIFICATE OF SERVICE**

I, Laurence W. Stinson, attorney for the Worthington Group of Wyoming, LLC, hereby certify that on the 26<sup>th</sup> day of April, 2007, I served a true and correct copy of the foregoing correctly addressed to the following:

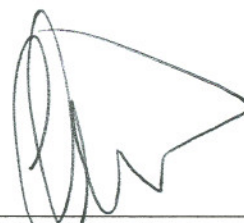
Terri A. Lorenzon  
Chairman of the EQC  
122 West 25th Street  
Herschler Building, Room 1714  
Cheyenne, Wyoming 82002

John S. Burbridge  
Office of the Wyoming  
Attorney General  
123 Capitol Building  
Cheyenne, Wyoming 82002

John Wagner, Director DEQ  
122 West 25th Street  
Herschler Building  
Cheyenne, Wyoming 82002

Debra J. Wendtland  
Wendtland & Wendtland, LLP  
2161 Coffeen Avenue, Suite 301  
Sheridan, Wyoming 82801

Bryan Skoric  
Park County Attorney  
1002 Sheridan Avenue  
Cody, Wyoming 82414



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**Laurence W. Stinson**