

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

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 )

DOCKET NO. 06-3814

**FILED**

SEP 10 2007

Terri A. Lorenzon, Director  
Environmental Quality Council

**ORDER**

THIS MATTER having come before the Environmental Quality Council on July 9 through 11, 2007, in Cody, Wyoming with Sara Flitner, Hearing Examiner, and Council members Richard C. Moore, John Morris, F. David Searle, and Mark Gifford conducting the hearing; and the Council being otherwise well advised in the premises, the Council finds as follows:

**Findings of Fact**

1. Appearances:

(a) Debra J. and Anthony T. Wendtland, of Wendtland and Wendtland, LLP appeared for Petitioners David Jamison, Robert Hoszwa, and Northfork citizens for Responsible Development (Petitioners).

(b) Laurence W. Stinson of Bonner and Stinson, P.C. and Jessica Rutzick of the Law Office of Jessica Rutzick

appeared for Intervenor, Worthington Group of Wyoming, LLC (Intervenor).

(c) John S. Burbridge, of the Wyoming Attorney General's Office, appeared for the Department of Environmental Quality (DEQ).

2. Petitioners appealed the DEQ's decision to issue a permit to construct the Copperleaf Subdivision Water Supply, Treatment, Storage, and Booster Pumping System, Permit No. 06-274RR. Petitioners, David Jamison and Robert Hoszwa own land adjoining the Cooperleaf Subdivision and hold State of Wyoming groundwater permits for wells on their lands.

3. The primary issue considered at hearing was whether the DEQ's decision to issue a permit to construct a water supply system to Intervenor complied with the applicable Wyoming law as set forth in Chapters 3 and 12 of the Water Quality Rules and Regulations.

4. DEQ reviews subdivision applications submitted by boards of county commissioners under Wyo. STAT. §§ 18-8-306; 18-5-307 to determine if the application will meet the minimum standard for subdivision applications as provided by Chapter 23 of the Water Quality Rules and Regulations. However, DEQ does not issue a permit at that time. The Authority to approve a subdivision is with the county commissioners. Once the

subdivision is approved by the county commissioners, if there is a public water system involved the subdivision owner must apply for a permit to construct from DEQ.

5. Initially Intervenor submitted a subdivision application to the county commissioners that included individual wells as the source of water supply. That application was withdrawn before DEQ completed its review under Chapter 23.

6. Intervenor re-submitted its subdivision application to the county commissioners with a central water system as the source of water supply. The central water system design includes an infiltration gallery into the North Fork of the Shoshone River. It also includes three underground water wells as a source of back-up water supply. DEQ completed a review of this application and sent a letter of "no adverse recommendation" to the county.

7. DEQ then received an application for a permit to construct the central water system for the Copperleaf subdivision. Pursuant to Water Quality Rules and Regulations, Ch. 3, § 5, which provides the procedural basis to apply for a permit, no construction of a public water supply, sewerage system, treatment works, disposal system or other facility shall be allowed unless a permit to construct, install or modify has been obtained from the administrator.

8. DEQ followed its usual practice for review of the application and found that there was no reason to deny the application and, therefore, issued the permit.

9. Water Quality Rules and Regulations, Ch. 12 provide the design and construction standards for public water systems. Pursuant to Water Quality Rules and Regulations, Ch. 12, § 6 (c) an engineering design report shall be submitted with each application. Among other things, for treatment facilities the engineering design report shall include:

(V) Sources of water supply shall be described to include:

(A) Groundwater Sources.

(I) Geology of aquifer and overlying strata.

(II) Summary of source exploration data, including test well depth and method of construction; test pumping rates and duration; and water levels and specific yield.

Water quality, including biological, radiological and chemical quality data sufficient to determine necessary treatment processed and compliance with all drinking water standards as determined by the administrator. The same water quality data for all secondary sources shall also be provided.

(III) Sources of possible contamination around well and in any known recharge areas, including location

of any waste site, industrial facilities and wastewater disposal areas.

(B) Surface water sources.

(I) Safe annual yield, the quantity of water available from the source during the average and driest years of record.

(II) Hydrological data, stream flows and diversion records.

(III) Representative water quality data, including bacteriological, radiological, chemical and physical data. These data shall be sufficient to determine the necessary process and ability to meet water quality standards.

(IV) Description of the watershed noting sources of potential contamination.

(V) Description of any anticipated changes in water quality.

(VI) Description of any diversion dams, impoundments or reservoirs and appurtenances.

10. Intervenor's application contained both surface and groundwater sources of supply.

11. It is DEQ's practice not to require a pump test prior to a well being drilled, thus Intervenor was not required to provide a "summary of source exploration data, including test

well depth and method of construction; test pumping rates and duration; and water levels and specific yield" as required by Ch. 12, § 6(c)(V)(A)(II).

12. It is also DEQ's practice to allow some of the required information to be provided post-construction. In particular DEQ doesn't require a test well in every instance if DEQ believes it already has enough information about a particular aquifer.

13. DEQ did not require up to date biological and radiological tests because there were existing wells using the same aquifer and there was data from those wells. Instead, DEQ placed a condition on the permit that this information would be provided post-construction.

14. This data is necessary pre-construction to properly characterize the source of the water and determine the type of treatment that the water will need.

15. Intervenors did provide information from two wells in the area the 6CU well and the Bradford well as test well data. However, that information did not include the sufficient information regarding the materials used, the method of construction, and the method of completion.

16. The water wells are hydrologically connected to the river, such that the State Engineer's Office considers them the

same source of supply. As such both the ground water wells and surface water permits would be regulated by priority if there is a call on the river.

17. The permit to construct does not grant the permit holder a water right. Water rights are regulated by the State Engineer's Office and interference with a water right would also be a matter for the State Engineer's office.

### Conclusions of Law

1. The Council acts as the hearing examiner for DEQ and conducts hearings in any case contesting the grant of any permit authorized or required by the Environmental Quality Act. Wyo. STAT. ANN. § 35-11-112. Permit No. 06-274RR was granted pursuant to WYO. STAT. ANN. § 35-11-301 (a)(iii). The appeal of Permit No. 06-274RR was filed within 60 days of DEQ's issuance of the permit on October 5, 2006, and is therefore timely. Thus, the Council has jurisdiction over this matter. WYO. STAT. ANN. § 35-11-112; DEQ RULES OF PRACTICE AND PROCEDURE, Ch. I, § 16 (a).

2. Although the evidence showed that DEQ as a matter of course it does not require applicants for permits to construct to submit, pre-construction, all the information required by the WQD rule Ch. 12, § 6(c)(v), the rule specifies that engineering design report "shall" include this information. As such these

requirements are mandatory and such information must be included within the permit application.

3. Based on the findings enumerated above, DEQ has not complied with WQD rule Ch. 12 § 6(c) because it has not required the Intervenor to submit all the information required by WQD Rule, Ch. 12, § 6 (c)(v).

4. Petitioner has not shown that the permit was not otherwise issued in conformance with Wyoming law and that DEQ has not otherwise complied with the rules and regulations applicable to the issuance of this permit.

**IT IS THEREFORE HEREBY ORDERED THAT:**

1. The permit to construct is suspended and Intervenor is required to supplement its application with updated and complete information as specified in WQD Rules and Regulations Chapter 12, § 6 (c)(v).

2. After Intervenor submits its additional information, DEQ shall review and evaluate the application as a whole with the additional information and determine if the permit should be modified.

3. DEQ shall then advise this Council and parties of its determination as to whether the permit should be modified.



3. If DEQ determines that no modification to the permit is required, petitioners will have Fifteen (15) days from the notification from DEQ to object to the permit. If DEQ determines that the permit is to be modified, DEQ shall modify the permit and must reinitiate the normal notice and comment procedures.

SO ORDERED this 31 day of August, 2007.

  
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Sara Flitner, Presiding Officer

## CERTIFICATE OF SERVICE

I, Kim McGee, certify that at Cheyenne, Wyoming, on the 10<sup>th</sup> day of September, 2007, I served a copy of the foregoing **ORDER** by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to;

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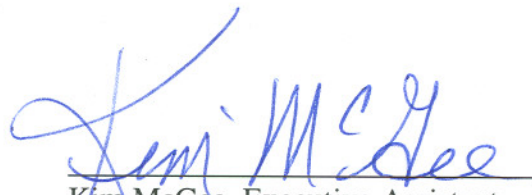
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