

FILED

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
OF THE STATE OF WYOMING

JUN 05 2007

IN THE MATTER OF THE APPEAL)
OF THE COPPERLEAF SUBDIVISION WATER)
SUPPLY, TREATMENT, STORAGE, AND) Docket No. 06-3814
BOOSTER PUMPING SYSTEMS,)
Permit No. 06-274RR / Reference No. 06-236RR)

Terri A. Lorenzon, Director
Environmental Quality Council

PETITIONERS' PRE-TRIAL CONFERENCE MEMORANDUM

Petitioners/Appellants David Jamison, Robert Hoszwa and Northfork Citizens for Responsible Development (Petitioners), by and through their undersigned attorneys, hereby submit their Pre-Trial Conference Memorandum as follows:

I: Nature of the Case.

This is an appeal by Petitioners from the final decision by the Administrator of Water Quality Division of the Wyoming Department of Environmental Quality ("DEQ") and the Director of the DEQ to grant a permit to construct the Copperleaf Subdivision Water Supply, Treatment, Storage, and Booster Pumping System. At issue is Permit No. 06-274RR / Reference No. 06-236RR which was issued on October 5, 2006. As itemized in greater detail in the section entitled: "*Issues*" below, the primary focus of this appeal is to bring before the Council the failure of the agency to collect all data mandated by statute and regulation prior to grant of the permit which is the subject of this appeal.

II: Pending Motions.

Worthington Group of Wyoming, LLC ("Developer") has filed a Motion to Dismiss Petitioner's Petition for Review alleging lack of standing. Petitioners have responded to said motion to dismiss and the matter is now pending before the Council. Arguments for and against Developer's Motion to Dismiss are scheduled to be heard by the Council at the Pre-Trial Conference on June 22, 2007.

III: Issues.

1. Did the WDEQ collect all documentation mandated pursuant to WQD Rules and Regulations found in Chapter 3, and Chapter 12 Section 2(a) and (b); Section 3, and Section 6(c)(v)(A) prior to granting applicant's permit to construct under WQD Chapter 3?
2. Did the DEQ collect all mandated documentation pursuant to W.S. §§ 18-5-301 thru 315, (in particular W.S. 18-5-306(a)(vi)); and WQD Chapter 23 prior to granting Developer permission to use three groundwater wells as Public Water Supply wells?
3. Did the DEQ comply with the mandatory requirements of W.S. § 18-5-306(a)(vi) and collect and accurately assess the proposed water supply system in terms of dependability?

IV: Witnesses.

Petitioners will call the following witnesses:

1. Gretchen L. Hurley, P.G. of Hurley Geological Consulting, Cody, WY
2. Craig Cooper of Cooper Consulting, Riverton, WY
3. John Passhel, P.G. – WDEQ Program Principal, Cheyenne, WY
4. Jeff Hermansky, P.E. – WDEQ Reviewing Engineer , Jackson, WY
5. David Jamison
6. Robert Hoszwa

V: Exhibits.

1. May – July 1977 Cody Enterprise Newspaper Accounts of Water Regulation of North and South Forks of Shoshone River.
2. May – September 1977 Wyoming Water Commissioner: Chester Blackburn's daily activity reports for water use on the Shoshone and Clark's Fork River drainages in Park County, Wyoming.
3. March 28, 2005 First WQD Chapter 23 Subdivision Application Submitted to the Wyoming Department of Environmental Quality for the proposed Copperleaf Subdivision on behalf of Worthington Group of Wyoming, Submitted by Sage Civil Engineering, later withdrawn on May 26, 2005 by Developer.

4. May 4, 2005 Before the State Engineer: Petition For Diversion Of Water Through The Copperleaf Subdivision Pipeline, Permit No. 33288 In Exchange For An Equal Amount Of Water Released From the State of Wyoming's Water Account in the Enlargement Buffalo Bill (Shoshone) Reservoir, Permit NO. 9553RES.
5. May 16, 2005 Before the Wyoming Department Of Environmental Quality Water Quality Division: Brief from Northfork Citizens For Responsible Development Written Comments In Opposition To the Copperleaf Chapter 23 Subdivision Application.
6. July 28, 2005 State of Wyoming - Office of the State Engineer Application For Permit To Appropriate Surface Water by Applicant: North Fork Communities, Inc. and Permit No. 33288 to Appropriate Surface Water.
7. July 28, 2005 State Engineer: Order Granting an Exchange of Stored Water in Lieu of the Diversion of an Equivalent Amount of Direct Flow Water.
8. August 31, 2005 Second WQD Chapter 23 Subdivision Application Submitted to the Wyoming Department of Environmental Quality for the proposed Copperleaf Subdivision on behalf of Worthington Group of Wyoming, Submitted by Sage Civil Engineering describing a surface water supply source only from the North Fork Shoshone River.
9. September 16, 2005 Debra J. Wendtland letter to J. Wagner and J. Hermansky regarding the lack of a dependable water source.
10. September 19, 2005 State of Wyoming U.W. 5 Application for Permit to Appropriate Ground Water by the Worthington Group of Wyoming, LLC: Copperleaf No. 1 Well (Permit No. U.W. 170379).
11. September 19, 2005 State of Wyoming U.W. 5 Application for Permit to Appropriate Ground Water by the Worthington Group of Wyoming, LLC: Copperleaf No. 2 Well (Permit No. U.W. 170380).
12. September 30, 2005 State Engineer's Office letter from M. Ebsen to J. Hermansky Re: Copperleaf 2nd (August 31, 2005) Chapter 23 Submittal 2005-99-44.
13. October 14, 2005 Affidavit of Craig Copper (and all attachments).
14. January 24, 2006 Appellee, North Fork Communities, Inc.'s Response Brief: *Exchange Petition For Diversion Of Water Through The Copperleaf Subdivision Pipeline, State Engineer's Permit No. 33288 In Exchange For An Equal Amount Of Water, Minus Operational Losses, From the State Of Wyoming's Water Account In The Enlargement Buffalo Bill (Shoshone) Reservoir, Permit No. 9553R, Fifth Judicial District Court Civil No. 23801.*
15. February 27, 2006 Department of Environmental Quality: Facsimile from J. Hermansky to J. Davis (Park Co. Deputy Co. Attorney) with attachment of September 30, 2005

State Engineer's Office letter from M. Ebsen to J. Hermansky Re: Copperleaf 2nd Submittal 2005-99-44.

16. March 3, 2006 State of Wyoming U.W. 5 Application for Permit to Appropriate Ground Water by the Worthington Group of Wyoming, LLC: Copperleaf No. 3 Well (Permit No. U.W. 173457).

17. March 20, 2006 Supplemental Groundwater Supply Report For The Copperleaf Subdivision, Park County, Wyoming, Prepared by: Pilch Engineering. (This report is attached to and made a part of the May 31, 2006 Water Supply & Treatment Design Report (Chapter 3) submitted to the Wyoming Department of Environmental Quality for the Copperleaf Subdivision on behalf of Worthington Group of Wyoming, LLC, for infiltration gallery,..... submitted by Sage Civil Engineering. (*infra number 18*).

18 April 26, 2006 Water Supply and Treatment Design Report (Chapter 3) application submitted to the Wyoming Department of Environmental Quality for the Copperleaf Subdivision on behalf of Worthington Group of Wyoming, LLC, for use of Three (3) Public Water Supply Wells,..... submitted by Sage Civil Engineering; including the March 20, 2006 "Pilch Report" addressing potential to supply subdivision entirely using groundwater wells.

19. May 10, 2006 Debra J. Wendtland letter to Park County Board of Commissioners, but copied to: J. Hermansky, J. Wagner, D. MacKinzie, P. Tyrrell. Regarding: Copperleaf's Chapter 23 DEQ Submission and inadequacy of dependable water source.

Attachments to May 10, 2006 letter:

a. December 7, 2004 Northfork Communities, Inc. letter to Bo Bowman (Park County Planning Coordinator).

b. March 28, 2005 First WQD Chapter 23 Subdivision Application Submitted to the Wyoming Department of Environmental Quality for the proposed Copperleaf Subdivision on behalf of Worthington Group of Wyoming, Submitted by Sage Civil Engineering, later withdrawn on May 26, 2005 by Developer. (*supra Number 3*).

c. May 4, 2005 Before the State Engineer: Petition For Diversion Of Water Through The Copperleaf Subdivision Pipeline, Permit No. 33288 In Exchange For An Equal Amount Of Water Released From the State of Wyoming's Water Account in the Enlargement Buffalo Bill (Shoshone) Reservoir, Permit NO. 9553RES. (*supra Number 4*).

d. July 28, 2005 State Engineer: Order Granting an Exchange of Stored Water in Lieu of the Diversion of an Equivalent Amount of Direct Flow Water. (*Supra Number 7*).

e. August 25, 2005 Robert and Michelle Keith appeal of the SEO Exchange Order to the district court.

f. September 19, 2005 State of Wyoming U.W. 5 Application for Permit to Appropriate Ground Water by the Worthington Group of Wyoming, LLC: Copperleaf No. 1 Well (Permit No. U.W. 170379) (*supra* Number 10).

g. September 19, 2005 State of Wyoming U.W. 5 Application for Permit to Appropriate Ground Water by the Worthington Group of Wyoming, LLC: Copperleaf No. 2 Well (Permit No. U.W. 170380) (*supra* Number 11).

h. March 3, 2006 State of Wyoming U.W. 5 Application for Permit to Appropriate Ground Water by the Worthington Group of Wyoming, LLC: Copperleaf No. 3 Well (Permit No. U.W. 173457) (*supra* Number 16).

i. April 26, 2006 Water Supply and Treatment Design Report (Chapter 3) application submitted to the Wyoming Department of Environmental Quality for the Copperleaf Subdivision on behalf of Worthington Group of Wyoming, LLC, for use of Three (3) Public Water Supply Wells,submitted by Sage Civil Engineering; including the March 20, 2006 "Pilch Report" addressing potential to supply subdivision entirely using groundwater wells. (*supra* Number 18).

20. May 26, 2006 Water Supply & Treatment Design Report (Chapter 3) submitted to the Wyoming Department of Environmental Quality for the Copperleaf Subdivision on behalf of Worthington Group of Wyoming, LLC, for infiltration gallery,submitted by Sage Civil Engineering.

21. May 31, 2006 Letter from J. Easum to J. Hermansky clarifying contents of original April 26, 2006 application for the 3 wells, and the May 26, 2006 application for the infiltration gallery.

22. June 1, 2006 Memorandum to: J. Hermansky, from: J. Passehl, P.G., Subject: Chapter 12 Technical Review of "*Supplemental Groundwater Supply Report for the Copperleaf Subdivision Park County, Wyoming, March 2006 by Pilch Engineering*", Copperleaf Subdivision; Park County.

23. June 16, 2006 T. Pilch letter to J. Hermansky and J. Passehl, Subject: Review Response to John Passehl's June 1st memo regarding the Chapter 3 application for the Copperleaf Subdivision water supply.

24. July 24, 2006 WDEQ Review of Plans and Specifications, Project: Copperleaf Subdivision Water Supply, Treatment, Storage and Pumping, by J. Hermansky.

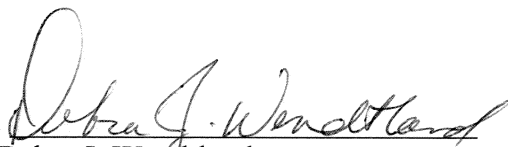
25. August 7, 2006 T. Pilch Report to J. Hermansky, Subject: Copper Leaf (sic) Subdivision.

26. August 9, 2006 Sage Civil Engineering letter to J. Hermansky addressing/responding to Memo of J. Hermansky dated 7/24/06.

27. September 20, 2006 WDEQ Review of Plans and Specifications, Project: Copperleaf Subdivision Water Supply, Treatment, Storage and Pumping, by J. Hermansky.
28. September 20, 2006 T. Pilch Report to Sage Civil Engineering regarding: Copperleaf UIC Review Comments.
29. October 5, 2006 Wyoming Department Of Environmental Quality Water Quality Division Permit to Construct: Copperleaf Subdivision Water Supply, Treatment, Storage, and Booster Pumping Systems, Permit No. 06-274RR / Reference No. 06-236RR.
30. October 12, 2006 Debra J. Wendtland letter to J. Hermansky requesting the Chapter 22 Capacity Development analysis required prior to WDEQ issuing any Chapter 3 permit. This item was never received by Wendtland and Wendtland, LLP as requested. We are still not sure if it was ever completed.
31. December 11, 2006 T. Pilch letter to J. Hermansky and J. Passehl, Subject: Copper Leaf (sic) Subdivision DEQ – Review Response.
32. April 13, 2007 Honorable Norman E. Young, decision letter in: *Exchange Petition For Diversion of Water Through The Copperleaf Subdivision Pipeline, Permit No. 33288 in Exchange for an Equal Amount of water, Minus Operational Losses, from the State of Wyoming's Water Account In the Enlargement Buffalo Bill (Shoshone) Reservoir, Permit No. 9553R, Fifth Judicial District, Civil No. 3801.*
33. Excel Spreadsheets for wells in Township 52 North Range 105 W; Sections 15, 21, 22 and 23 (Jamison and Hoszwa wells are in Section 23).

Dated this 30 day of May, 2007.

Debra J. Wendtland

By: 
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CERTIFICATE OF SERVICE

I certify that on the 30th day of May, 2007, I served a true and correct copy of the foregoing as follows:

John Burbridge	<input checked="" type="checkbox"/> Federal Express
Office of Attorney General	<input type="checkbox"/> U.S. Mail
123 State Capitol	<input type="checkbox"/> Hand Delivery
Cheyenne, WY 82002	<input type="checkbox"/> Facsimile

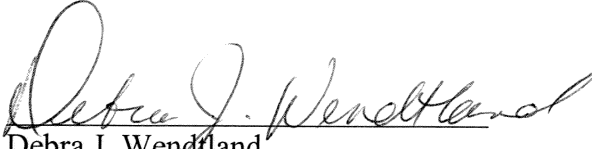
Laurence W. Stinson	<input checked="" type="checkbox"/> Federal Express
Bonnor Stinson, P.C.	<input type="checkbox"/> U.S. Mail
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John Corra	<input type="checkbox"/> Federal Express
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John Wagner, Administrator	<input type="checkbox"/> Federal Express
WDEQ	<input checked="" type="checkbox"/> U.S. Mail
122 W. 25 th , 4-W	<input type="checkbox"/> Hand Delivery
Herschler Bldg	<input type="checkbox"/> Facsimile
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