

FILED

JUL 16 2009

**Jim Ruby, Executive Secretary
Environmental Quality Council**

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF)
VIOLATION AND ORDER ISSUED TO:)
Dale Ruby and JM Land & Developing Co.) Docket No. 08-3601
2901 Four J Road, Gillette WY 82718)

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S
STATUS REPORT

Wyoming Department of Environmental Quality (DEQ), pursuant to the Wyoming Environmental Quality Council's (EQC) Order dated April 20, 2009, filed April 22, 2009, files this Status Report in the above-captioned matter.

BACKGROUND

DEQ issued Notice of Violation (NOV) & Order No. 4388-08 to Dale Ruby and JM Land & Developing Co. (JM Land) concerning an unpermitted "public water supply" known as the Ridgeway Community Well Association.

Order No. 4388-08 orders JM Land to:

- 1) identify which components of the public water supply for Ruby Estates require work to comply with standards in Chapter 12 of the Wyoming Water Quality Rules & Regulations;

- 2) apply for a Chapter 3 permit for modifications or replacements to the public water supply needed to comply with Chapter 12 standards;
- 3) complete construction of modifications or replacements to the public water supply needed to comply with the Chapter 3 permit;
- 4) get an operator for the system who is certified as required by Chapter 5.

On November 28, 2008, JM Land filed a Notice of Appeal and Request for Hearing (Petition) with the EQC to contest the NOV & Order on the ground that the Ridgeway Community Well and associated tanks and pipeline system do not constitute a “public water supply” or “public water system.” In response to DEQ’s request for admission, JM Land has admitted that the Ridgeway Community Well system has at least 15 service connections or regularly serves an average of at least 25 persons daily.

Based on the statutes and regulations referenced below, the requirements in the contested DEQ Order apply to the Ridgeway Community Well system so long as that system constitutes a “public water supply” as defined in WYO. STAT. ANN. § 35-11-103(c)(viii).

APPLICABLE STATUTES AND REGULATIONS

The following Wyoming statutes and regulations are relevant to the issues raised by JM Land’s appeal of DEQ Order No. 4388-08:

WYO. STAT. ANN. § 35-11-301(v) requires a permit from DEQ to construct, install, modify or operate any “public water supply” or, with certain exceptions, a “subdivision water supply.”

WYO. STAT. ANN. § 35-11-103(c)(viii) defines “public water supply” to mean a system for the provision to the public of water for human consumption through pipes or constructed conveyances, “if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals.” The Wyoming Environmental Quality Act does not define “subdivision water supply.”

WYO. STAT. ANN. § 35-11-302(a)(iii) authorizes rules to prescribe standards for issuance of permits for a “public water supply” or for a “subdivision water supply.”

Chapter 3 (Permits for Public Water Supplies), Section 3(a)(iv) of the Wyoming Water Quality Rules & Regulations defines “public water supply” to mean any water supply as defined in WYO. STAT. ANN. § 35-11-103(c)(viii), but does not include a definition of “subdivision water supply.”

Chapter 12 (Design and Construction Standards for Public Water Supplies), Section 4 (Definitions) only supplements the definitions contained in WYO. STAT. ANN. § 35-11-103, but does not include a definition of “subdivision water supply.”

Chapter 23 (Minimum Standards for Subdivision Applications), Section 3(a)(iv), defines “public water supply” to mean any water supply as defined in WYO. STAT. ANN. § 35-11-103(c)(viii), but does not include a definition of “subdivision water supply.”

WYO. STAT. ANN. § 35-11-302(a)(iv) authorizes rules to prescribe standards for certification of operators for “community water systems” and “nontransient noncommunity water systems.”

WYO. STAT. ANN. § 35-11-103(c)(xvii) defines “community water systems” to mean a “public water supply” that has at least fifteen (15) service connections used year-round by residents or that regularly provides water to at least twenty-five (25) residents year-round.

WYO. STAT. ANN. § 35-11-103(c)(xviii) defines “nontransient noncommunity water systems” to mean a “public water supply” which is not a “community water system” and which regularly provides service to at least twenty-five (25) of the same persons for more than six (6) months of the year where those persons are not full-time residents.

Chapter 5 (Certification of Operators of Public Water Systems), Section 2 (Definitions) only supplements the definitions already contained in WYO. STAT. ANN. § 35-11-103.

RECENT DEVELOPMENTS

By letter to Kathelene Brainich (EPA Region 8) dated May 21, 2009 and copied to DEQ’s attorney of record in this case (**copy attached hereto**), counsel for JM Land represented that:

What we are planning to do is to form one or more corporations and make transfers of assets and other changes so that there will no longer be a system with at least 15 services or serving at least 25 people. The Rubys will relinquish ownership and control of the wells and distribution systems. . . .

. . . . Given that there will no longer exist a “public water system” or “community water system.” I do not believe that either DEQ or

EPA will have any further jurisdiction with respect to the wells, the tank, distribution system and lot owners.

By letter to Kathelene Brainich (EPA Region 8) dated June 24, 2009 and copied to DEQ's attorney of record in this case (**copy attached hereto**), counsel for JM Land expands on his May 21, 2009 letter and represents that:

Thus there will be three separate water supply systems which will not be interconnected. We will obtain the number of people living in each home. Each system will serve fewer than 15 homes and fewer than 25 people. The Rubys will relinquish ownership and control of the wells and distribution systems. . . .

. . . . I have discussed this with the Wyoming Attorney General's office and Wyoming DEQ. They will require drawings, a census of users, and proof that the three systems are truly separate. We will provide details as soon as we can get the survey plat.

JM Land has now provided DEQ with a copy of the survey, dated July 6, 2009 (**copy attached hereto**), but still needs to provide confirmation by a licensed Wyoming engineer that the resulting systems are in fact physically separate from one another and confirmation that each separate system serves fewer than 15 connections and fewer than 25 individual users. If, as a rule of thumb, each service connection on average serves 2.6 individuals, then limiting each separate system to 8 service connections would give some expectation that the number of individuals served by each system will remain below 25.

STATUS

The requirements in contested DEQ Order No. 4388-08 are based on Chapters 3, 5 & 12 of the Wyoming Water Quality Rules & Regulations, all of which apply to a "public water supply" as defined in WYO. STAT. ANN. § 35-11-103(c)(viii). If JM Land provides DEQ with the above-specified confirmation

that the Ridgeway Community Well system at issue in this appeal is in fact split up so that none of the resulting separate systems fit within the definition of a "public water supply" under WYO. STAT. ANN. § 35-11-103(c)(viii), then the resulting separate systems will not be subject to the referenced requirements in the contested DEQ Order. In that case, the utility of holding a hearing in JM Land's appeal of this Order will be questionable.

DATED this 16th day of July, 2009.



Mike Barrash (Bar No. 5-2310)
Senior Assistant Attorney General
123 State Capitol Building
Cheyenne, Wyoming 82002
307-777-6946

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the foregoing WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY'S STATUS REPORT was served this 16th day of July, 2009 by United States mail, first class postage prepaid, and also by email and/or facsimile transmission, addressed as follows:

Randall T. Cox
Attorney at Law
400 South Kendrick St., Suite 101
Gillette, WY 82716
RT@coxhorning.com
FAX: 307-685-0527



Randall T. Cox
Attorney and Counselor At Law
A Professional Corporation

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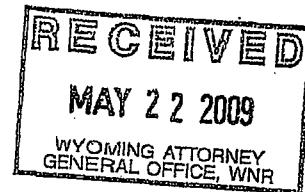
Admitted in Wyoming and Montana

Telephone (307) 682-2500
Telecopier (307) 685-0527
e-mail: rt@coxhorning.com

May 21, 2009

Ref: 8ENF-W

Kathelene Brainich
United States Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1029



RE: Administrative Order
Docket No. SDWA-08-2009-0023
PWS ID# 5601602

Dear Ms. Brainich,

This office represents Jesse Dale Ruby and JM Land & Developing Co. The Wyoming DEQ has initiated enforcement proceedings against my clients and I have responded to that proceeding in front of the Environmental Quality Council. I have been working with the Attorney General's Office and Water Quality Division to try to resolve this matter. I have spoken with local engineers and surveyors and with Mr. Faucett, and none of them informed me that you sent an Administrative Order on December 30, 2008. At that time my clients were in Arizona. As you know, they are elderly. They did not advise me of this Order.

What we are planning to do is to form one or more corporations and make transfers of assets and other changes so that there will not be a system with at least 15 services or serving at least 25 people. The Rubys will relinquish ownership and control of the wells and distribution systems.

The tentative plan involves several components. These will be refined after the completion of a survey to establish location and elevations of all curb stops, the base of the tank and the wells.

First, we have formed a corporation and we will probably form a second corporation to be owned by the lot owners. Second, there are several lot owners who had agreed to pay money to be a part of a community well system. Several of those lot

owners failed to pay. Their service will be cut off no later than July 1. I will be sending notices to them next week.

Then it is likely that one of the wells and the existing tank and chlorination system will be set up to provide service to the lots to the North and West of the system. One of the wells and a new tank will be set up to serve the owners of lots South of the existing system. Finally, the lots North and East of the system will probably become the owners of the new shared well with a shared distribution system and individual pressure systems.

The land where the wells and existing tank are located will be surveyed and conveyed to a new corporation.

As these plans are refined, I will keep you informed.

Given that there will no longer exist a "public water system" or "community water system," I do not believe that either DEQ or EPA will have any further jurisdiction with respect to the wells, the tank, distribution system and lot owners. If you disagree with this analysis, please provide me with citations to the appropriate legal authority.

Of course, the lot owners will benefit from the significant improvements to the well sites, storage tank and chlorination system that have already been paid for by the Rubys. The homeowners will also benefit because they will be the owners of the systems.

Please feel free to contact me if you have any questions.

Very truly yours,



Randall T. Cox

RTC/st

cc: Dale and Marjorie Ruby
Mike Barrash, Wyoming Attorney General's Office

Randall T. Cox
Attorney and Counselor At Law
A Professional Corporation

Admitted in Wyoming and Montana

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June 24, 2009

Ref: 8ENF-W

Kathelene Brainich
United States Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1029

RE: Administrative Order
Docket No. SDWA-08-2009-0023
PWS ID# 5601602

Dear Ms. Brainich:

This office represents Jesse Dale Ruby and JM Land & Developing Co. I wrote to you on May 21, 2009. At that time we had retained a surveyor who is going to locate all components of the water supply system; establish elevations, and make a map. He had told me before my letter to you was written that he was going to start the work during the last week in May. We have had unusual rains in June. I called him yesterday to obtain the plat and learned that he has not started the work yet. I emphasized the need to meet EPA's deadlines, and he again promised that he will start right away.

In the meantime I did form one corporation which will own a well and a tank and some distribution lines to six homes. A newly refurbished large tank with an eight-inch concrete foundation, chlorinator and control building will be installed at the top of a ridge in the SESW of Section 8. One of the wells in the SENW of Section 8 will be connected to that tank. That system will supply five homes in the South one-half of Section 8 and one home in the SWNW of Section 9 (Lots 72, 75, 89, 90, 91 and 92). The homeowners will be given the stock in the corporation, the Ridgeway Community Well Association. This system is referred to herein as the "RCWA System."

I am going to form another new corporation which will own the existing tank and chlorination system in the SESW of Section 8, and one of the wells. That system will

not have any interconnection with the Ridgeway Community Well Association system. That system will supply the existing pipeline running north to six homes in the NWNW of Section 8 and Section 5 (Lots 95, 99, 101, 102, 103 and 109). This system is referred to herein as the "Existing System."

The Rubys will drill a new well, probably on Lot 63, near the center of Section 4. A well building and a chlorination system will be installed. This well will serve homes through the existing pipeline system in Section 4, in the NWNW, SWNW, NWSW, NWSE, and SWSE of Section 4 and the NENE of Section 9. The system will be separated from the pipeline coming from Section 8. This will be a standalone system. It will probably not need a storage tank, although when we get the survey we may add a pressure tank system. This system will require a new well permit from the Wyoming State Engineer, permitted as a "Miscellaneous" use. This system is referred to as the "New System."

When we obtain the survey information, we will prepare well permit applications, assignments, easements and other legal instruments as needed. We have obtained the names and addresses of all lot owners and we will be providing notifications to them as needed.

Thus there will be three separate water supply systems which will not be interconnected. We will obtain the number of people living in each home. Each system will serve fewer than 15 homes and fewer than 25 people. The Rubys will relinquish ownership and control of the wells and distribution systems.

As these plans are refined, I will keep you informed. Until I obtain the survey plat we cannot move forward with specific details.

Given that there will no longer exist a "public water system" or "community water system," I do not believe that either DEQ or EPA will have any further jurisdiction with respect to the wells, the tank, distribution system and lot owners. I have discussed this with the Wyoming Attorney General's office and Wyoming DEQ. They will require drawings, a census of users, and proof that the three systems are truly separate. We will provide details as soon as we get the survey plat.

The new well will be drilled within the next three months. The construction cost of the "New System" is estimated to be about \$35,000. The tank for the RCWA System will be installed in the next few weeks, and as soon as it is installed and tested, the RCWA System and the Existing System will be separated. The cost of installing the new tank and making all necessary connections and disconnections should be less than \$40,000. All systems will be designed to provide at least 35 pounds of pressure to all users. It is planned to complete all of the work within the next ninety days.

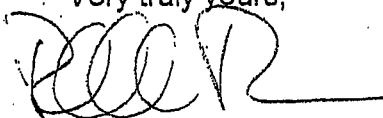
It is my understanding that you have already received requested information about the coliform bacteria monitoring.

The existing tank is lined with Verdin Perma-bilt epoxy and it does have an opening which can be unbolted so that the tank can be entered and cleaned. DEQ had inquired about those topics. The new tank for the RCWA System will be sandblasted and lined with the same epoxy.

Please feel free to contact me if you have any questions. Perhaps we should schedule an informal conference, as noted in your letter of December 30, 2008.

A map is enclosed. We will provide a better map when the surveyor gets his work done.

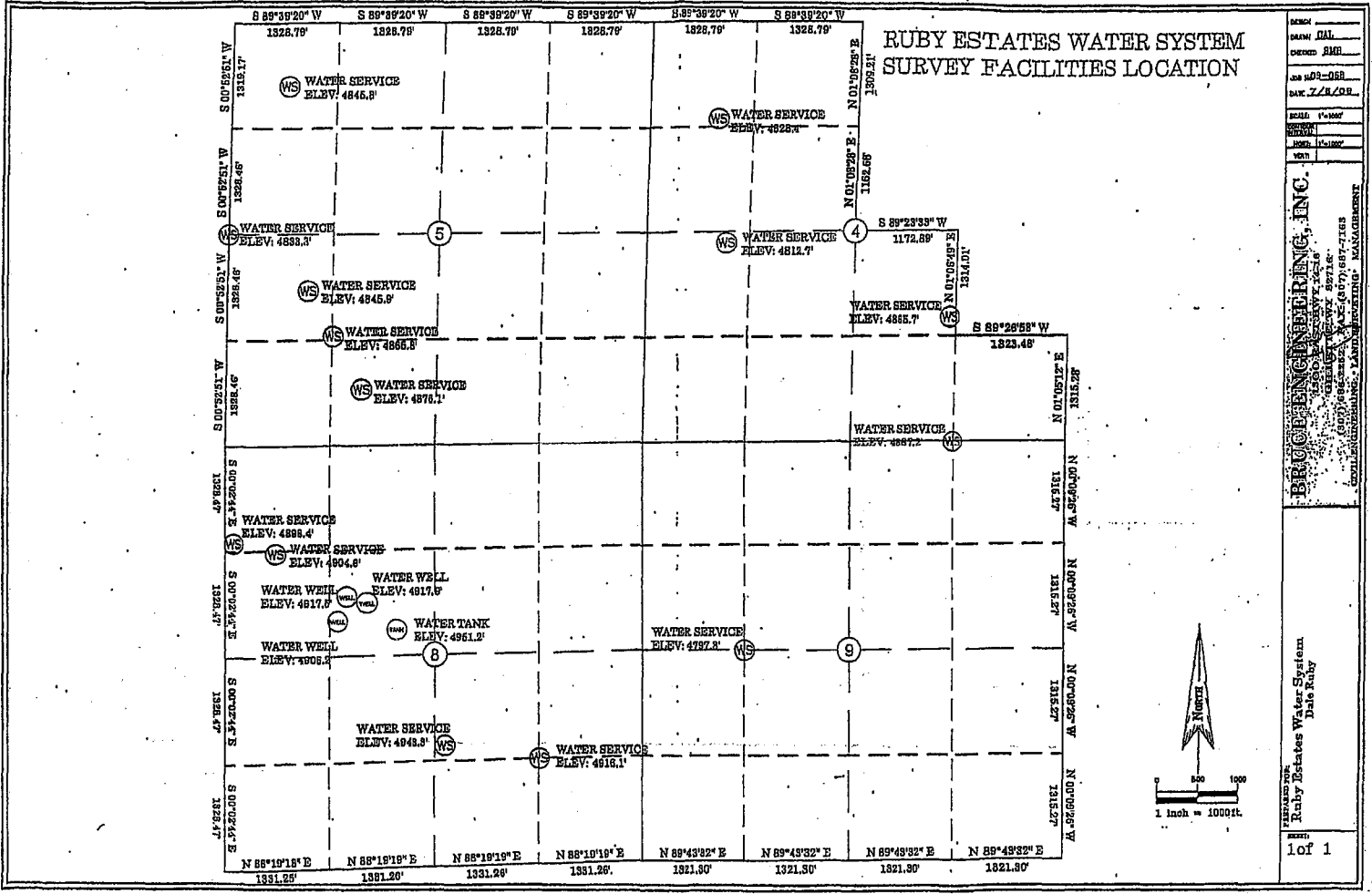
Very truly yours,

A handwritten signature in black ink, appearing to read 'RTC', with a long horizontal line extending to the right.

Randall T. Cox

RTC/st
Enclosure

cc: Dale and Marjorie Ruby
Mike Barrash, Esq., Wyoming Attorney General's Office
Duane Faucett
Frank Stevens, Esq.



REVISION: _____
 DRAWN: DAL
 CHECKED: BMD
 JOB NO: 03-058
 DATE: 7/8/08
 SCALE: 1"=100'
 SHEET: 1 OF 1
 DATE: 7/8/08
 PROJECT: RUBY ESTATES WATER SYSTEM SURVEY FACILITIES LOCATION
 CLIENT: RUBY ESTATES WATER SYSTEM
 PROJECT MANAGER: [Name]
 SURVEYOR: [Name]
 CHECKER: [Name]

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PREPARED FOR:
 Ruby Estates Water System
 Date: Ruby

SHEET:
 1 of 1

