

FILED

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

SEP 01 2009

Jim Ruby, Executive Secretary
Environmental Quality Council

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)

JOINT STIPULATION FOR WITHDRAWAL AND DISMISSAL OF APPEAL

Petitioners Dale Ruby and JM Land & Developing Co. and Respondent Wyoming Department of Environmental Quality (DEQ), the only parties in the above-captioned matter, pursuant to the Wyoming Environmental Quality Council's (EQC) Order dated and filed August 14, 2009, jointly stipulate as follows:

BACKGROUND

DEQ issued Notice of Violation (NOV) & Order No. 4388-08 to Dale Ruby and JM Land & Developing Co. (collectively "JM Land") concerning an unpermitted "public water supply" known as the Ridgeway Community Well Association serving Ruby Estates located in Campbell County. 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 (WWQR&R);
- 2) Apply for a WWQR&R 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; and
- 4) Retain an operator for the system who is certified as required by WWQR&R 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 while 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."

WWQR&R Chapter 3 (Permits for Public Water Supplies), 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."

WWQR&R 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."

WWQR&R 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.

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

PROPOSED PARTITION OF THE RIDGEWAY COMMUNITY WELL SYSTEM

The Petitioners have obtained a survey of the existing wells, tanks, distribution system and curb stops. The Petitioners have applied for two well permits for new wells to be drilled in Section 4, and each of these wells will serve three lots with one home on each lot. The Petitioners will apply for another well permit for a new well which will serve no more than three lots with one home on each lot. The Petitioners will install a refurbished tank with control devices on Lot 90 in Section 8 to serve no more than eight lots with one home on each lot. The existing tank will serve no more than eight lots with one home on each lot. When construction is completed, the systems will be physically separated. The work is ongoing and will be completed during this construction season. Delays in obtaining well permits are not expected to upset this plan.

DEQ will require drawings, a census of users, and proof that each resulting system is truly separate. JM Land has provided DEQ with a copy of the survey, dated July 6, 2009, 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.

The requirements in contested DEQ Order No. 4388-08 are based on WWQR&R Chapters 3, 5 & 12, 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.

TERMS FOR WITHDRAWAL AND DISMISSAL OF APPEAL

- A) JM Land shall complete the following measures within the specified schedule to assure that any water supply system resulting from partition of the Ridgeway Community Well system does not constitute a public water supply which would be subject to the requirements in contested DEQ Order No. 4388-08:
 - a. Within 75 days after filing this Joint Stipulation, disconnect and remove distribution pipes and fittings as necessary to prevent the service of 15 or more service connections and 25 or more individuals by any water supply system resulting from partition of the Ridgeway Community Well system.
 - b. Within 20 days after filing this Joint Stipulation, conduct a census to determine the number of individuals served by any water supply system resulting from partition of the Ridgeway Community Well system.
- B) JM Land shall provide DEQ with the following documentation to confirm completion of each measure identified above within fifteen (15) days after completing each measure.
 - a. A map signed by a Wyoming licensed land surveyor or civil engineer of any water supply system that includes any part of the partitioned Ridgeway Community Well system.
 - b. A written certification signed by a Wyoming licensed civil engineer confirming that any water supply system that includes any part of the partitioned Ridgeway Community Well system serves fewer than 15 service connections and fewer than 25 individuals.
 - c. A written certification signed by a Wyoming licensed civil engineer confirming that any water supply system that includes any part of the partitioned Ridgeway Community Well system has had distribution pipes and fittings disconnected and removed as necessary to prevent the service of 15 or more service connections and 25 or more individuals.

C) The requirements in contested Order No. 4388-08 shall be stayed so long as JM Land completes each measure identified above within the specified schedule.

D) Contingent upon JM Land's documented completion of all measures identified above within the specified schedule, the Ridgeway Community Well System will not be subject to the requirements in contested Order No. 4388-08.

E) In reliance upon this Joint Stipulation, JM Land stipulates that its appeal of contested Order No. 4388-08 shall be deemed withdrawn and dismissed.

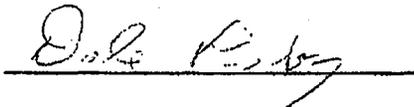
F) JM Land and DEQ shall each bear their own costs and attorney fees through filing of this Joint Stipulation.

G) JM Land and DEQ request that the EQC enter an Order:

- a. approving and binding JM Land and DEQ, their successors and assigns to this Joint Stipulation; and
- b. dismissing JM Land's appeal in this matter.

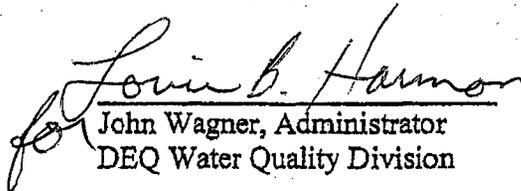
DATED this 31st day of August, 2009.

FOR PETITIONERS:



Dale Ruby (JM Land & Dev. Co.)

FOR RESPONDENT:


John Wagner, Administrator
DEQ Water Quality Division

APPROVED AS TO FORM:



Randall T. Cox (Bar No. 5-1996)
Attorney for Petitioners
400 South Kendrick St., Suite 101
Gillette, Wyoming 82716
307-682-2500



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