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

**IN RE BIG VALLEY AND CROSSED)
ARROWS IMPROVEMENT DISTRICT) EQC DOCKET NO. 16-3601**

**DEPARTMENT OF ENVIRONMENTAL QUALITY'S
PRETRIAL MEMORANDUM**

The State of Wyoming, Department of Environmental Quality ("Department"), by and through its undersigned counsel, hereby files its Pretrial Memorandum. This matter arises from a Notice of Violation and Order issued on May 26, 2016 by the Department to the Big Valley and Crossed Arrows Improvement District ("Improvement District"). The Notice of Violation and Order asserts violations of Wyo. Stat. § 35-11-301(a)(i) and (a)(iii) and the Department's rules and regulations as a result of a defective septic system discharging raw sewage into a drainage area which flows into the Greybull River.

The Improvement District contests the Notice the Violation and Order and requests a hearing before the Council. Although the Improvement District does not contest the Department's findings in the Notice of Violation with regard to the defective

septic system, it asserts it is not the owner of the defective septic system. This pretrial memorandum provides a summary of the legal issues before the Council.

ISSUE BEFORE THE COUNCIL

The sole issue before the Council is whether the Improvement District is the legal owner of the septic system subject to the Notice of Violation and Order.

The Improvement District claims it does not own the septic system because: 1) the Improvement District's current bylaws state that the Improvement District is only responsible for potable water and 2) the Improvement District's date of formation occurred after any applicable deed existed conveying the septic system to the Improvement District.

LEGAL SUMMARY

Water and waste improvement and service districts are formed pursuant to Wyoming statutes. Wyo. Stat. §§ 18-12-101 *et seq.* These improvement districts are formed by the county commissioners, upon petition, and through a resolution. Wyo. Stat. §§ 18-12-104 through -118. The date of formation of an improvement district is identified by the date of the resolution approving formation. Wyo. Stat. §§ 18-12-116 through -118. An improvement district may sue, be sued, and can enter into contracts. Wyo. Stat. §§ 18-12-112(a)(ii) through (iii). Although an improvement district may adopt bylaws, it cannot adopt bylaws that violate the law. Wyo. Stat. § 18-12-112(a)(vii).

Bylaws are self-imposed rules between an entity and its members. ALAN S. GUTTERMAN, BUSINESS TRANSACTIONS SOLUTIONS, PART III. FORMATION AND OPERATION OF BUSINESS ENTITIES § 32:24 (2016). Bylaws are intended to manage the

business and regulate the affairs of an entity. *See* Wyo. Stat. § 17-16-207. They are rules and guidelines for the internal governance and control of an entity. ALAN S. GUTTERMAN, BUSINESS TRANSACTIONS SOLUTIONS, PART III. FORMATION AND OPERATION OF BUSINESS ENTITIES § 32:24 (2016). As such, bylaws are not designed to and cannot convey real property.

The conveyance of real property must be done through a written instrument, typically a mortgage or deed. *See* Wyo. Stat. § 39-13-101. That mortgage or deed must then be filed in the office of the county clerk in the county where the property is located. Wyo. Stat. § 34-1-118. Under Wyoming law, a deed is defined as “a conveyance of real property, in writing signed by the grantor, whereby the interest held by the grantor to real property is transferred from one to another.” *Id.* A quitclaim deed “shall be sufficient to pass all the estate which the grantor could lawfully convey by deed of bargain and sale.” Wyo. Stat. § 34-1-107.

LEGAL DISCUSSION

In this case, the evidence presented at the contested case hearing will demonstrate the following:

1. The Improvement District was formed under Wyoming law on March 18, 2003. *See* DEQ Exhibit 1.
2. On October 28, 2003, Vision Quest Estates, the developer of the subdivision, conveyed the sewer system to the Improvement District through a “Quitclaim Deed Assignment of Rights.” *See* DEQ Exhibit 2.
3. On February 9, 2004, the Improvement District adopted Bylaws. Those Bylaws state that the “water and

sewer system of the [Improvement District] shall be owned by the District.” *See* DEQ Exhibit 3.

4. On August 31, 2010, the Improvement District amended its Bylaws. In relevant part, the Bylaws were amended to state the “water system of the [Improvement District] shall be owned by the District.” *See* DEQ Exhibit 6.

5. There is no evidence of a subsequent deed filed after October 28, 2003 involving the septic system.

As such, the Improvement District was formed by the Park County Commissioners on March 18, 2003 through resolution. The Improvement District’s Bylaws are irrelevant to the date of formation. Additionally, Bylaws cannot convey real property and the Improvement District cannot amend its Bylaws to remove the septic system from its ownership or responsibility. The Improvement District’s 2010 Amended Bylaws are irrelevant to the ownership of the septic system. Instead, there is an October 28, 2003 deed filed with the Park County Clerk conveying the ownership septic system to the Improvement District. There is no evidence that any party other than the Improvement District owns the septic system. Moreover, there is no evidence of a deed recorded with the Park County Clerk after 2003, which would indicate a subsequent conveyance of the septic system. Accordingly, under Wyoming law, the Improvement District is the current owner of the defective septic system.

WITNESSES

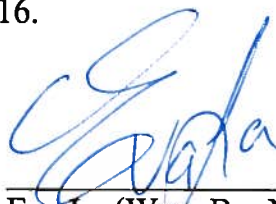
The Department may call the witness identified in the Department’s Witness List (attached hereto as Attachment A). The Department reserves the right to call any of the

witnesses identified by the Improvement District or any additional witnesses necessary for foundation, impeachment, and rebuttal.

EXHIBITS

The Department's exhibits are identified in the Department's Exhibit List (attached hereto as Attachment B). This pretrial memorandum, the witness and exhibit lists, and the exhibits have been mailed to the Improvement District prior to the hearing. The Department reserves the right to enlarge portions of these exhibits for use as demonstrative exhibits at the hearing. The Department also reserves the right to designate additional exhibits as may become necessary for impeachment or rebuttal.

DATED this 22 day of September 2016.



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CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of September, 2016, a true and correct copy of the foregoing document and attachments were filed electronically with the Wyoming Environmental Quality Council's online docket system and in person at the Wyoming Environmental Quality Council's office and served electronically through that system on the following:

Todd Parfitt
Director, DEQ
todd.parfitt@wyo.gov

Kevin Frederick
Administrator, Water Quality Division, DEQ
Kevin.frederick@wyo.gov

This certifies that true and correct copies of the foregoing document and attachments were served via United States mail addressed as follows:

Big Valley and Crossed Arrows Improvement District
P.O. Box 33
Meeteetse, WY 82433



WYOMING ATTORNEY GENERAL'S OFFICE

**ATTACHMENT A
DEPARTMENT OF ENVIRONMENTAL QUALITY'S
WITNESS LIST**

The Department may call the following witness:

1. **Kathy Shreve**, Environmental Program Principal, Water Quality Division, Department of Environmental Quality, 200 W. 17th Street, Cheyenne, WY 82002. Ms. Shreve will testify regarding the Notice of Violation and Order issued by the Department of Environmental Quality to Big Valley and Crossed Arrows Improvement District. Ms. Shreve will testify about the inspections and her investigation of the defective septic system. She will testify to the efforts she underwent to determine the ownership of the defective system. Ms. Shreve may also provide testimony regarding information and actions she has knowledge of as a result of her employment with the Department of Environmental Quality which includes, but is not limited to, technical data and information related to the defective septic system, past violations, permitting, and enforcement relating to Big Valley and Crossed Arrows Improvement District.

**ATTACHMENT B
DEPARTMENT OF ENVIRONMENTAL QUALITY'S
EXHIBIT LIST**

Ex. No.	Exhibit Date	Description	Pages	DEQ Bates Numbers
DEQ 1	3/18/2003	Certified Resolution Approving Formation of the Big Valley and Crossed Arrows Improvement District	4	287-290
DEQ 2	10/28/2003	Certified Quitclaim Deed Assignment of Rights	2	255-256
DEQ 3	2/9/2004	Certified Big Valley and Crossed Arrows Improvement District Bylaws and Rules	21	266-286
DEQ 4	7/15/2008	Certified Mortgage for Glen and Terry Moore	9	257-265
DEQ 5	3/4/2008	Resolution Appointing Board of Directors for Big Valley/Crossed Arrows Special Improvement District	2	221-222
DEQ 6	8/31/2010	Big Valley and Crossed Arrows Improvement District Rules and Regulations and Bylaws	34	138-171
DEQ 7	5/26/2016	Notice of Violation and Order, Docket No. 5430-14	6	1-6
DEQ 8	7/20/2012 through 7/23/2012	Department correspondence with landowners	22	115-136
DEQ 9	7/24/2012	Phone messages from landowners	1	137
DEQ 10	8/3/2012	Department correspondence from Big Valley and Crossed Arrows Improvement District	7	55-61
DEQ 11	10/22/2013	Department correspondence from Terry Moore	4	96-99
DEQ 12	2012 through 2016	Department emails	17	38-44, 47-49, 108-114
DEQ 13	6/4/2015	Public Meeting Notice and Sign-in Sheet	2	291-292
DEQ 14	N/A	Subdivision Maps	4	45, 196, 198-199

DEQ 15	7/12/2013	Inspection Report	2	223-224
DEQ 16	7/12/2013	Inspection Photos	11	244-254
DEQ 17	8/22/2016	Inspection Photos	7	211-217
DEQ 18	1991 through 1996	DEQ Inspection Reports and Photos	19	225-243