

# Exhibit F

IN THE DISTRICT COURT, COUNTY OF PARK  
STATE OF WYOMING

EXCHANGE PETITION FOR DIVERSION OF ) Civil No. 23801  
WATER THROUGH THE COPPERLEAF )  
SUBDIVISION PIPELINE, PERMIT NO. 33288 )  
IN EXCHANGE FOR AN EQUAL AMOUNT OF ) State Engineer  
WATER, MINUS OPERATIONAL LOSSES, ) Docket No. 05-11-03  
FROM THE STATE OF WYOMING'S WATER )  
ACCOUNT IN THE ENLARGEMENT BUFFALO )  
BILL (SHOSHONE) RESERVOIR, PERMIT )  
NO 9553R. )

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**APPELLEE NORTH FORK COMMUNITIES, INC.'S RESPONSE BRIEF**

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APPEAL TO THE FIFTH JUDICIAL DISTRICT COURT  
PARK COUNTY, WYOMING  
THE HONORABLE NORMAN E. YOUNG PRESIDING

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**STATEMENT OF ISSUES ON APPEAL**

- I. APPELLANTS LACK STANDING TO CHALLENGE THE EXCHANGE ORDER GRANTED BY THE OFFICE OF THE STATE ENGINEER TO NORTH FORK COMMUNITIES, INC.
- II. THE STATE ENGINEER DID NOT ILLEGALLY GRANT AN EXCHANGE OF WATER.
  - A. THE EXCHANGE ORDER WAS NOT GRANTED UNLAWFULLY.
  - B. THE PETITION FOR EXCHANGE WAS NOT PROCEDURALLY DEFECTIVE.
  - C. THE GRANTING OF THE EXCHANGE ORDER WAS NOT ARBITRARY.
  - D. OTHER ISSUES RAISED BY APPELLANTS.

## INTRODUCTION

The North Fork Communities, Inc. is developing a residential area known as the Copperleaf Subdivision. Copperleaf Subdivision lies west of Cody, Wyoming, between the Buffalo Bill Reservoir and Yellowstone National Park in an area known as Wapiti Valley. The subdivision lies north of North Fork Highway and south of the North Fork of the Shoshone River. (See maps, CRA 60-64)

Copperleaf Subdivision is in need of a firm supply of water on a year round basis for domestic uses. To meet that need North Fork Communities filed an Application for Permit to Appropriate Surface Water and was granted Permit No. 33288 with a priority date of May 4, 2005. Appendix A. Because the permit "may not have a reliable supply of water...during some periods of the year," North Fork Communities also filed an Exchange Petition on May 4, 2005. The domestic supply of water is necessary to serve the equivalent of 155 single family units plus up to another 75 single family units outside the subdivision. CRA 1 at paragraph 3.

**Points of Reference.** The Court is respectfully referred to the maps designated in the record on CRA pages 60 through 64. From these maps the location of the Copperleaf Subdivision owned by North Fork Communities, Inc. can be readily determined. The location of the subdivision in relation to the Buffalo Bill Reservoir, the North Fork of the Shoshone River, the North Fork Highway are readily discernable. For a broader perspective the Court is referred to Appendix B, a map of the area and the Court is requested to take judicial notice that this area lies west of Cody, Wyoming and east of Yellowstone National Park.

From the maps four points of reference are important. Starting from the west and going east, the Copperleaf Subdivision is the most westerly point of reference together with the Copperleaf Subdivision pipeline. CRA 64. Traveling downstream and between the Copperleaf Subdivision and the Buffalo Bill Reservoir are the Appellants. CRA 42. Also referenced by the Appellants is another water right permittee, Calvin E. Wells, who also has land between the Copperleaf Subdivision and the Buffalo Bill Reservoir, CRA 46. See also the Exchange Petition at CRA 2, identifying appropriation serving all lands between the

Copperleaf Subdivision pipeline and the Buffalo Bill Reservoir, including the Keith and Wells property.

Moving further east the Buffalo Bill Reservoir is apparent. Finally, the last point of reference most easterly is below the outlet at Buffalo Bill Dam as set forth on CRA page 64. This is the point at which exchange water will be released "...to satisfy the appropriations of downstream users holding prior rights."

**How the Exchange Works.** Because year round flows of the North Fork of the Shoshone may not satisfy the domestic supply under Permit No. 33288, North Fork Communities desire an exchange of water, the source of which is water in storage in Buffalo Bill Reservoir. A Water Storage Account is owned by the State of Wyoming under Permit No. 9553R with a priority date of June 19, 1980. A firm annual yield of 20,000 acre feet of water is available for purchase and use by water users of the Shoshone River and its tributaries. See paragraph 1 of the Finding of Fact, CRA 49.

The senior appropriators which could potentially be affected by the exchange are appropriators which lie downstream from the Buffalo Bill Reservoir. Should those senior appropriators of the Buffalo Bill Reservoir make a call for water, then and in such event the water stored in the State Water Account under Permit No. 9553R would be released in an equivalent amount of the water being diverted by North Fork Communities under Permit No. 33288 in order to satisfy the senior appropriators downstream from the Buffalo Bill Reservoir. This stored water will provide "make-up" or "replacement" water to those prior rights. Paragraph 2 of Finding of Fact, CRA 49. In other words, the exchange protects appropriators senior to North Fork Communities, which senior appropriators are downstream from the Buffalo Bill Reservoir. The exchange has no bearing on the Appellants and cannot in any way affect the Appellants' water rights.

**Protection of Appellants.** North Fork Communities' priority date for domestic water supply is May 4, 2005. Appellants have water rights with priority dates in 1906, 1922, 1941 and 1954. These four water rights are senior to Permit No. 33288. In addition, and although not a party to this appeal, Mr. Wells alleges the priority dates for his water rights to be 1903, 1906 and 1961. These rights again are all senior to Permit No. 33288.

(CRA 42, 46 and 2 at paragraph 11). Appellants' water rights are also senior to the stored water (1980) which is the subject of the exchange.

The Appellants are well protected by the doctrine of prior appropriation as well as the Exchange Order. As provided in paragraphs 1(a) and (b) of the Exchange Order, prior to the exchange occurring the State Engineer must "...assure that all appropriators are fully protected in accordance with their respective stream priorities;..." and "That the exchange may only be made when it can be accomplished without injury to any other appropriators;" (CRA 49). It is important to note that all of Appellants' permit numbers set forth in his letter to the State Engineer's Office are specifically addressed on page 2, paragraph 11 of the Exchange Petition. CRA 2 and 42.

## ARGUMENT

### I. **Appellants lack standing to challenge the Exchange Order granted by the Office of the State Engineer to North Fork Communities, Inc.**

For Appellants to appeal the Exchange Order they must have standing to do so. Standing has been well defined in Wyoming:

The doctrine of standing is a jurisprudential rule of jurisdictional magnitude. At its most elementary level, the standing doctrine holds that a decision making body should refrain from considering issues in which the litigants have little or no interest in vigorously advocating. Accordingly, the doctrine of standing focuses upon whether a litigant is properly situated to assert an issue for judicial or quasi-judicial determination. Litigant is said to have standing when he has a "personal stake in the outcome of the controversy." This personal stake requirement has been described in Wyoming as a "tangible interest" at stake. The tangible interest requirement guarantees that a litigant is sufficiently interested in a case to present a justiciable controversy.

State ex rel. Bayou Liquors, Inc. v. City of Casper, 906 P.2d 1046, 1048 (Wyo. 1995) (citations omitted). Stated differently, "standing is a concept utilized to determine if a party is sufficiently affected to ensure that a justiciable controversy is presented to the Court." Memorial Hospital of Laramie County v. Department of Revenue and Taxation of State of Wyoming, 770 P.2d 223, 226 (Wyo. 1989) (citations omitted).

A litigant obtains standing for judicial review of an agency action only if that person is "aggrieved or adversely affected in fact" by the challenged action. W.S.A. § 16-3-114(a) (Lexis 2005). To be aggrieved or adversely affected the Appellants must show they have a "legally recognizable interest...which will be affected by the action." Hoke v. Moyer 865 P.2d 624, 628 (Wyo. 1993). The Appellants' reasonably recognizable interest which has been aggrieved or adversely affected must take the form of an injury or potential injury. This injury must be "...a perceptible, rather than a speculative, harm resulting from the agency action." Fosters, Inc. v. City of Laramie, 718 P.2d 868, 872 (Wyo. 1986). To establish the right to appeal, Appellants' alleged injury must generally be "...substantial, immediate and pecuniary." A future, contingent or merely speculative interest is ordinarily



not sufficient." L. Slash X Cattle Company, Inc. v. Texaco, Inc. 623 P.2d 764, 769 (Wyo. 1981).

Thus, for Appellants to have standing before this Court to appeal the SEO's Exchange Order, the Appellants must have alleged in some manner that they will suffer an injury which is "substantial, immediate and pecuniary." This the Appellants have failed to do.

Appellants' failure to demonstrate injury to the degree required to obtain standing can be readily found in Appellants' letter to the State Engineer, CRA 42. This letter was dated April 7, 2005, and received by the State Engineer on April 13, 2005. [Of interest, although not particularly relevant, is the fact that the Exchange Petition was signed on April 20, 2005, and received by the State Engineer on May 4, 2005. CRA 1-3.] Appellants oppose the exchange because "...it could cause us injury in times of low flow rates in the North Fork of the Shoshone River." (emphasis supplied) CRA 42. Mr. Wells makes a similar allegation: "As you know this could impact us in times of low water flow rates in the North Fork of the Shoshone River." (emphasis supplied) CRA 46. Appellants have failed to present specific facts to demonstrate how they have been injured by the Exchange Order. Failing to present such specific facts demonstrating "substantial, immediate and pecuniary" injury or damages precludes Appellants from having standing to contest the State Engineer's Order granting the exchange. Roe v. The Board of County Commissioners, Campbell County, et al, 997 P.2d 1021, 1023; 2000 Wyo. Lexis 31 (Wyo. 2000).

Not only have Appellants failed to meet the threshold requirement to establish standing to appeal the Exchange Order, the Exchange Order itself protects Appellants from any harm. The State Engineer recognized that several appropriations exist between the diversion point of the Copperleaf pipeline and the point where "make-up" water will be discharged from the Buffalo Bill Reservoir. Thus, the State Engineer found that water in the State of Wyoming's Water Account under Permit No. 9553R cannot be diverted at the Copperleaf Subdivision pipeline "...unless or until all water rights on the North Fork Shoshone River between the diversion point and the discharge point are satisfied." Paragraph 7 of the Finding of Fact of the Exchange Order, CRA 50. It has been held in

Wyoming that so long as the prior appropriator obtains all of the water to the full extent of his appropriation he has no right to interfere with or complain of the enjoyment of the rights of subsequent appropriators on the stream. Platte County Grazing Association v. State Board of Control, 675 P.2d 1279, 1283 (Wyo. 1984).

Having taken into account that the intervening appropriations must be protected, the State Engineer concluded as a matter of law (paragraph 3) that the exchange of water "...can be allowed without injury to other appropriators provided certain conditions set forth in the ORDER are complied with;..." CRA 50. In order for the exchange to take place the State Engineer placed conditions and limitations on the exchange. Those limitations included notification by the subdivision at least 24 hours in advance of the initiation of the exchange to the Water Commissioner and that the Commissioner shall "...assure that all appropriators are fully protected in accordance with their respective stream priorities;..." and that the exchange will be "...accomplished without injury to any other appropriator;..." See paragraph 1(a) and (c) of the Order in CRA 50-51. The provisions of this Order protect the Appellants as senior appropriators under what is known as the doctrine of prior appropriation. Budd v. Bishop, 543 P.2d 368 (Wyo. 1975).

Finally, Appellants lack standing to challenge the Exchange Order based on their attack regarding the administrative process followed by the State Engineer's Office. The Appellants cite what they allege to be numerous irregularities in the process. They allege that the State Engineer acted illegally, that the petition of North Fork Communities was defective and that the State Engineer acted arbitrarily by failing to hold a hearing. However, neither in the Appellants' letter to the State Engineer nor in the Appellants' brief have the Appellants set forth specifically how they have been aggrieved by the deviations from the administrative process or the entry of the Exchange Order. Having failed to demonstrate in any manner how they have been harmed or will be harmed, the Appellants lack standing to contest the Exchange Order. Roe, Supra.

For all of the foregoing reasons, Appellants lack standing to appeal the Exchange Order. Consequently, this Court is without jurisdiction to decide their case. Roe, Supra. The appeal must be dismissed.

**II. The State Engineer did not illegally grant an exchange of water.**

Although North Fork Communities does not in any way concede that Appellants have any standing to appeal the Exchange Order or that this Court has jurisdiction to hear their appeal, and without in any way waiving its jurisdictional argument, North Fork Communities will address the matters set forth in Appellants' Brief. Appellants argue that (a) the Exchange Order was illegal, (b) the Petition for Exchange was deficient and/or defective; and (c) that the Exchange Order was granted arbitrarily. North Fork Communities will address each of these issues.

**A. The Exchange Order was not granted unlawfully.** Pursuant to Permit No. 9553R the State of Wyoming has a water account in the Buffalo Bill Reservoir. (CRA 6-10). At the time of filing the Petition the water account had approximately 187,900 acre feet of water. This water is available for purchase and use by water users of the Shoshone River and its tributaries. This water account is added to by a firm yield from the North Fork of the Shoshone River of 20,000 acre feet of water per year. This is a minimum of 20,000 acre feet of water per year above and beyond water diverted by permit or appropriation west of the inlet of the North Fork of the Shoshone River into the Buffalo Bill Reservoir. This water is stored in the State Water Account in the Reservoir held by the Wyoming Water Development Office. The Exchange Order allows North Fork Communities to use up to 130 acre feet from 20,000 acre feet flowing by Appellants' headgate(s) to the Buffalo Bill Reservoir.

On May 4, 2005, the State Engineer's Office received from North Fork Communities, Inc. an Application for Permit to Appropriate Surface Water (See Appendix A). Upon receipt the Application was assigned Permit No. 33288. In paragraph 9 North Fork Communities estimated that it would take two years to complete construction and one year thereafter to apply water to beneficial use. North Fork Communities requested an annual diversion of 115 acre feet of water; and to ensure the availability of water and any expansion of domestic use, initiated the purchase of 130 acre feet of water from the State of Wyoming Water Account in Buffalo Bill Reservoir for exchanges diverted through the

Copperleaf Subdivision pipeline. See remarks section of Appendix A. Permit No. 33288 was approved by the State Engineer on July 28, 2005.

Contemporaneous with the filing for Permit No. 33288, North Fork Communities filed an Exchange Petition for diversion of water through the Copperleaf Subdivision pipeline, Permit No. 33288. Dated April 20, 2005, this Petition was also filed with the State Engineer's Office on May 4, 2005. (CRA 1-3). The exchange water under Permit No. 9553R has a priority date of June 19, 1980. (CRA 6-10). Thus, upon completion of the construction of facilities North Fork Communities can put the domestic supply to beneficial use with a priority date of May 4, 2005; and should such water not be available in priority it will then apply the water purchased from the State of Wyoming with a priority date of June 19, 1980.

Appellants criticize the State Engineer for entering the Exchange Order on the grounds that the State Engineer had no jurisdiction to do so. While it can be argued that the Exchange Order might have been better worded, its effect is prospective only. That is, "...the exchange may only be made after proof of the purchase of the water from the State of Wyoming storage account..." under Permit No. 9553R has been provided to the State Engineer. (emphasis supplied) Paragraph 1(b) of the Order, CRA 51. This is a condition and limitation on the Exchange Order. Thus, as a practical matter the Exchange Order has no force or effect until the following has happened:

1. The Copperleaf Subdivision pipeline is constructed;
2. The water is put to beneficial use; and
3. The agreement with the Wyoming Water Development Commission is finalized.

Obviously if the water right is not perfected by construction of the pipeline system, application for beneficial use and completion of the WWDC contract, then the exchange will never take place and the Order will have no force or effect. Perhaps the State Engineer should have designated his Order as a "Conditional Exchange Order" or as an "Interim Exchange Order" or as a "Prospective Exchange Order." However, the purpose, intent and language contained within the body of the Exchange Order makes it clear that it is an Order that will take effect in the future upon the completion of certain terms and conditions and

requirements. The State Engineer's action could only be determined to be unlawful should the State allow the actual physical exchange of water to take place without the written contract with the WWDC in place and on file and approved by the State Engineer.

**B. North Fork Communities' Petition was not procedurally defective.** Throughout Appellants' Brief they criticize the State Engineer's staff for performing administrative and ministerial functions. That a State agency would be helpful to the members of the public is apparently objectionable to the Appellants. Appellants overstate their argument with regard to allegations that the State Engineer's Office was being adversarial to the Appellants and biased toward North Fork Communities. See Footnote 5 at page 21 of Appellants' Brief. A plain reading of the Application for Permit and Petition for Exchange Order demonstrates that the documents were filed contemporaneously. The Application for Permit needed to receive a permit number in order to be considered by the State Engineer's Office. The permit number needed to be placed in the Petition for Exchange Order. It appears that all the State Engineer's Office did in this regard was perform ministerial or administrative functions in providing the numbers and dates to the appropriate blanks left in the Application and Petition by North Fork Communities.

The State Engineer's Office acted appropriately in this regard. The Wyoming State Engineer's Office Strategic Plan sets forth the agency philosophy:

SEO personnel will seek to provide the most efficient and courteous service possible to people we serve and regulate. We will maintain a high level of accuracy and a common sense approach to our regulatory activities.

Strategic Plan for the Wyoming State Engineer's Office, Wyoming State Board of Control and Wyoming Board of Registration for Professional Engineers and Land Surveyors, Submitted September 1, 2003 by Patrick Tyrell, State Engineer. Appendix C. Obviously, the SEO staff was doing what it was mandated to do and provided assistance in filing and processing the Application.

Furthermore, the State Engineer and his staff had the Application and Petition under review for almost three months from May 4, 2005, to July 28, 2005. The staff apparently uses a Petition Check Sheet (CRA 4). Of significance to Appellants is paragraph

13 of the check sheet. Therein the question is asked of the staff: "Is there any possible injury to other appropriators?" That matter is checked off as having been reviewed. It is obvious there was no possible injury to other appropriators, which would include the Appellants.

Appellants discount the Petition Check Sheet and criticize the State Engineer's Office for a lack of record "...indicating that a correct, thorough and substantive analysis of what injury the exchange **might** cause to other established and intervening North Fork water users like the Keiths." (emphasis supplied) Appellants' Brief at page 25. To the contrary, the record discloses that the State Engineer's Office did a thorough review of the Copperleaf Subdivision pipeline application. The Court presumes that the State Engineer and his staff do their duty. Denius v. TR Twelve, Inc., 589 P.2d 374 (Wyo. 1979) The burden is on the Appellants to demonstrate otherwise.

Looking at paragraph 11 of the Exchange Petition (CRA 2), all intervening appropriations are identified, including that of Appellants. Appellants, in either their letter of objections or in their Brief, have offered no evidence or allegation that the intervening appropriations will be injured. Nor do they offer any allegation or evidence to dispute that the "base flow of the North Fork Shoshone River is more than sufficient to satisfy all intervening appropriations of water." Further, the Appellants' allegations fly in the face of the State Engineer's finding that there is a "firm annual yield of 20,000 acre feet of water available for purchase and use by water users of the Shoshone River and its tributaries." (CRA 49). This is a firm yield of 20,000 acre feet of a priority of June 19, 1980, which 20,000 acre feet is above and beyond the intervening appropriations senior to North Fork Communities' permit and which water is flowing into storage year in and year out. The State Engineer concluded as a matter of law that the exchange "can be allowed without injury to other appropriators provided certain conditions set forth in the order are complied with" CRA 50.

**C. The Exchange Order was not entered arbitrarily and the certified record is sufficient to support the Exchange Order.** As pointed out above, there is sufficient information in the certified record to demonstrate the review of the Application for Permit to

Appropriate and the Petition for Exchange Water. What the record is devoid of is any credible information from the Appellants that any harm will come to them by the granting of the permit or the exchange petition. If anything, Appellants in their Brief demonstrate a lack of understanding of the operative effect of the water exchange and an acknowledgment that their water rights are senior and well protected in the event such an exchange ever takes place.

The State Engineer's Office is also criticized for "refusal to hold any hearing" on the petition. Appellants' Brief page 25. There is no statutory provision, rule or regulation authorizing the State Engineer to hold the hearing as apparently demanded by the Appellants. Hearings are not held on the issuance of a water permit. Hearings are held when the permit goes to adjudication as provided in W.S.A. § 41-4-511 (Lexis 2005). No hearing is provided concerning the Petition for Exchange Water under W.S.A. § 41-3-106 (Lexis 2005). Appellants fail to cite any authority authorizing or requiring the State Engineer to hold a hearing. It must be pointed out to the Court that this was an administrative matter before the State Engineer and not a regulatory matter before the Board of Control. The Board of Control does have authority to hold fact finding hearings. Section 8 of Chapter III, General Procedures, Rules of Board of Control.

**D. Other issues raised by Appellants.**

1. On page 8 of Appellants' Brief an allegation is made with regard to the improper signing of the Petition. Appellants confuse acknowledgment with verification. W.S.A. §§ 34-2-115-116 (Lexis 2005) provide that an acknowledgment certifies that the person appearing before the notary is the person named who executed his signature. The signature of Bob Kudelski as President of North Fork Communities, Inc. was an acknowledgment. (CRA 3). It was not subscribed and sworn to and in no way was it "swearing to the accuracy of all representations in the Petition." (Appellants' Brief p. 8).

2. Appellants ask this Court to order that the Exchange Order be expunged from public record. Appellants cite no authority for the expungement of records. To expunge means: *To destroy; blot out; obliterate; erase; efface designedly; strike out wholly. The act of physically destroying information - including criminal records - in files, computers, or*

*other depositories.* (Blacks Law Dictionary Abridged 6th Ed. 1991). Rather, if the Court rules in favor of Appellants the Court should provide for the filing of some order or document reflecting the Court's Order.

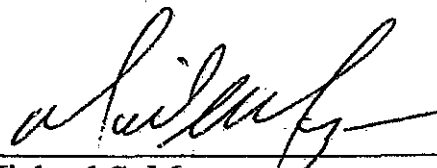
If the Court declines to dismiss the appeal on jurisdictional grounds, North Fork Communities requests the Court to find that the Petition was not defective or improper; that the State Engineer had jurisdiction and authority to proceed on the Petition and enter its Exchange Order; and that any procedural errors or defects were diminimus and not substantive in nature and have no harmful effect on Appellants.

### CONCLUSION

Appellants have no standing to prosecute this appeal and this Court has no jurisdiction to entertain the appeal. The appeal should be dismissed because Appellants have not and cannot demonstrate any harm to them.

In the event that the Court finds that the Appellants have standing and that this Court has jurisdiction, the Court is requested to find that the errors and defects alleged by the Appellants are minimal and without substantive harm to the Appellants and find that it should sustain the Exchange Order of the State Engineer. If the Court finds otherwise, then the proper remedy is to remand the case to the State Engineer for further proceedings consistent with its opinion.

RESPECTFULLY SUBMITTED this 24 day of January, 2006.



---

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 24 day of January, 2006, I served the above and foregoing Appellee North Forth Communities, Inc.'s Response Brief as follows:

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The Honorable Norman E. Young  
District Court Judge  
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cc: Laurence Stinson  
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# Exhibit G

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**9<sup>th</sup> Judicial District  
Court Chambers**

# Fax

|                       |                   |
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| Fax:                  | Pages: <i>1</i>   |
| Phone:                | Date:             |
| Re: <i>North Fork</i> | CC:               |

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**THE STATE OF WYOMING**  
NINTH JUDICIAL DISTRICT



NORMAN E. YOUNG  
DISTRICT JUDGE

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April 13, 2007

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Re: 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.

Civil No. 3801  
State Engineer Docket No. 05-11-03

Dear Counsel:

Upon review of the aforementioned case, I have determined that Northfork should be dismissed for lack of standing. Additionally, the Exchange Order is illegal and void. Mr. Wendtland will draft an order reflecting these findings and direct the State Engineer to take all necessary steps to expunge it from the public record.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Norman E. Young", written over a horizontal line.

Honorable Norman E. Young

NEY/ajv

# Exhibit H

# SUBDIVISION APPLICATION

SUBMITTED TO THE  
WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY

FOR



ON BEHALF OF:

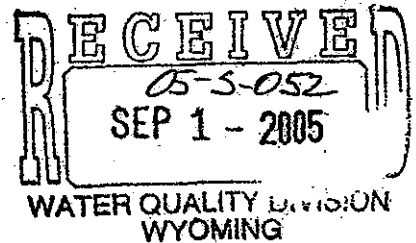
## WORTHINGTON GROUP OF WYOMING

SUBMITTED BY:

SAGE CIVIL ENGINEERING  
2824 BIG HORN AVENUE  
CODY, WY 82414



AUGUST 31, 2005



## INTRODUCTION

This project is located in Park County, Wyoming near Wapiti and on the north side of the highway. The proposed development consists of 553.21 acres +/- . The developers are setting aside half of this land for open space, and creating 131 lots on the remaining lands. There is also a 12.67 acre area in the northeastern most portion of the property where twelve two-family townhomes are proposed.

A new public water supply system is proposed to serve this subdivision. This water system will be supplied water via the North Fork of the Shoshone River. An infiltration gallery will provide pre-treatment of the water which will help during runoff periods. The treatment plant proposed will provide filtration and chlorination. The delivery system will consist of approximately 24,000 L.F. of main ranging in size from 2 inches to 8 inches and 155 new service taps.

A new public wastewater treatment plant is proposed to serve this subdivision. A low pressure collection system will collect and transfer waste water from each of the multi-family units, and the 131 single family lots. The system being proposed is the E One system. The waste water will enter a Sheaffer Modular Reclamation and Reuse System ("Sheaffer System") to provide treatment. After being disinfected and filtered, water meeting the State standards for "reclaimed water" will be reused in a subsurface drip irrigation system.

# TREATED WATER SYSTEM

## DESCRIPTION OF SERVICE AREA

The service area includes the Copperleaf Subdivision and potentially additional lots in surrounding subdivisions. The Copperleaf Subdivision is located on the North Fork of the Shoshone River west of Cody, Wyoming. Copperleaf consists of 131 single family lots and 24 townhomes. Several subdivisions are located in the immediate area of the project and currently do not have a treated water distribution system. Service of lots in addition to Copperleaf is not planned as part of this project. However, certain areas could be easily served through extension of the Copperleaf service mains. Please reference the Treated Water Service Area Map within this document for an overview of the Copperleaf Subdivision and additional lots in the immediate area.

## CURRENT AND PROJECTED SYSTEM DEMAND

### Average Day

Average daily per capita demands are based on information obtained from the Northwest Rural Water District (NRWD). The service area for NRWD is similar in characteristic to the Copperleaf Subdivision in that they both serve rural areas in the Cody area. Copperleaf is likely to have a seasonal and intermittent occupation pattern whereas the majority of the NRWD service area is made up of single family primary residences. The majority of Copperleaf homes are likely to be vacation homes. In light of this data NRWD per capita flow rates are conservative estimates for this project. Per Capita flows for NRWD service areas are shown below. Three individuals per tap were assumed to calculate per capita flow rates.

| Area       | Use/Tap | gpcd |
|------------|---------|------|
| Heart Mtn. | 214     | 71.3 |
| Lovell     | 222     | 74.0 |
| North Cody | 209     | 69.7 |
| South Fork | 197     | 65.7 |
| Average    | 211     | 70.2 |

Although the numbers above are expected to be higher than the water use for Copperleaf, we propose to use an average daily per capita demand of 80 gallons to ensure adequate service.

The system will be designed with essentially two population estimates. The first will be used to size the tanks and assumes 100% occupation of the Copperleaf Subdivision alone. The tanks will be configured so that additional storage can be easily added, if necessary. The population assumption above results in 155 lots at 3 people/lot and 80 gpcd for an average daily demand of 37,200 gpd. The developers feel that it is likely that full build out will likely not occur for up to 15 years.



The second population estimate will be used to size the pumps, treatment system and distribution system. It assumes full build out, full occupation and an additional 75 lots served. Currently, 120 to 150 individual lots surround the Copperleaf Subdivision (See Treated Water Service Area Map). Many of these are not feasible to be served by installation of a distribution system. However, they could be served with a coin operated fill station. Some of the surrounding lots could be served by connecting to the distribution system. No plans for this exist at this time but the distribution system (pumps and intake) will be sized to accommodate this additional flow. As a basis for sizing the system the number of lots we will use for calculating the demand is increased by 75 lots for a total of 230 lots. Average daily demand for these conditions is then 55,200 gpd. This demand will likely not be seen for some time.

### **Maximum Day**

NRWD did not provide maximum day demand figures. The factor for maximum day demand was calculated from the values in Chapter 12 of the Water Quality Rules and Regulations. The maximum day/average day =  $340/125 = 2.72$ . This factor was used to calculate the maximum day demands of 101,184 gpd and 150,144 gpd. This peaking factor is conservative due to the fact that it is applicable to service areas where the treated water system provides water for irrigation in addition to the domestic uses. This subdivision will have a separate raw water system for irrigation making large differences between the average day and peak day less likely.

### **Maximum Hour**

A peaking factor of 7 is proposed to determine the peak hour demand for the system. This factor is conservative and reflects some of the unknowns regarding future expansion and the potential for the installation of a filling station. The peak hour flow rate for 230 lots was calculated to be 268 gpm. A peak flow rate of 300 gpm will be used to size the distribution pumps to provide additional flow should a filling station be installed.

### **Fire Flow Requirements**

Fire protection for the subdivision will be provided via a draft hydrant located near the subdivision entrance. This hydrant will draw water from one of the proposed ponds, and is not part of the water system. Therefore, no fire flow requirements will be factored into the system design.

### **PUMPING SYSTEMS**

Pumps are proposed at the infiltration gallery which will provide the head for all the treatment processes and filling the tanks. After flowing out of the tanks, distribution pumps will provide the service pressure to the distribution system.

### **SOURCE AND WATER SUPPLY**

Source water for the system will be the North Fork of the Shoshone River.

## **Description of Surface Water Source**

The developer has obtained an appropriation of water (Permit No. 33288) from the Wyoming State Engineer's Office to divert up to 200 gpm for domestic purposes through the Copperleaf Pipeline. The developer is proposing to utilize this appropriation without the benefit of an exchange from the Buffalo Bill Reservoir to serve the Copperleaf Subdivision. We contacted State Engineer's Office staff and they checked their records and indicated the North Fork of the Shoshone River has never been regulated for water right priorities due to water shortage including periods of low flow or drought conditions. Based upon this information, we believe the above water right satisfies the dependability requirement for a public water system.

## **Representative Water Quality Data**

Water quality samples have been taken at two separate times. The first sample was taken near the diversion location directly from the river in November of 2004. This sample is representative of the water quality during low flow conditions. The results of this test indicate that the water quality in the river is quite high.

In May of 2005 an additional sample was taken from a perforated pipe (piezometer) installed in the proposed location of the intake gallery. This pipe consists of 20 ft of 4 inch PVC pipe with 0.5 inch round holes as perforations. It was installed without a gravel filter. A pump was installed, and water was pumped from this pipe for approximately 6 hrs at a flow rate of approximately 13 gpm. After six hours a sample was taken for analysis. River flows during this sample were near the season's peak based on flow measurements from a nearby USGS gauge. This sample represents worst case conditions for 2005. This water quality analysis also indicated relatively high water quality, even though the river was carrying a large amount of sediment. Iron levels were elevated in the second sample. This is addressed further below in the proposed treatment processes section.

The sample taken in May from the piezometer is representative of effects the alluvium and high river flows have on water quality. The complete water quality results from these two samples are included near the end of this document.

## **Description of Watershed**

The contributing watershed is one of the most pristine available. The National Forest Service Boundary is located only a few miles upstream of the diversion point and the headwaters of the North Fork of the Shoshone River are located within Yellowstone National Park. No industrial land uses exist upstream of the diversion point and the Copperleaf site is the only remaining large agricultural land use between the diversion point and the National Forest Boundary. The other land use between the National Forest and the Copperleaf diversion is residential.

## **Description of Anticipated Changes in Water Quality**

Due to the location of the watershed, changes in water quality are expected to be minimal. Land uses upstream of the diversion are not likely to change significantly. The primary remaining land use up stream is residential. Any contamination from this land use is likely to be small in quantity and risks minimal.

# Exhibit I

*Case Rush*

STATE OF WYOMING

OFFICE OF THE STATE ENGINEER  
HERSCHLER BLDG., 4-E CHEYENNE, WYOMING 82002  
(307) 777-6163

APPLICATION FOR PERMIT TO APPROPRIATE GROUND WATER

APPLICATION FOR WELLS AND SPRINGS

Note: Only springs flowing 25 gallons per minute or less, where proposed use is domestic and/or stock watering, will be considered as ground water appropriations.

SGAN-MICRO JAN 06 2006

FOR OFFICIAL USE ONLY

Temporary Filing No. U.W. 28-2-212

PERMIT NO. U.W. 170378  
WATER DISTRICT NO. 3 DISTRICT 9  
U.W. DISTRICT Pack Co.

NOTE: Do not fold this form. Use typewriter or print neatly with black ink.  
ALL ITEMS MUST BE COMPLETED BEFORE APPLICATION IS ACCEPTABLE

NAME AND NUMBER OF WELL or SPRING Copperleaf No. 1 Well

1. Name of applicant(s) Bob Kudelski, The Worthington Group of Wyoming, LLC Phone: 307-527-5323

2. Address of applicant(s) P.O. Box 236, Cody, Wyoming 82450  
(Mailing Address) (City) (State) (Zip)

3. Name & address of agent to receive correspondence and notices: Todd A. Rhodes, President, Wyoming Water Rights Consulting, Inc., P.O. Box 681, Worland, Wyoming 82401 Phone: 307-347-8329  
(Mailing Address) (City) (State) (Zip)

4. Use to which the water will be applied:
- Domestic: Use of water in 3 single family dwellings or less, non-commercial watering of lawns and gardens totaling or houses served:
  - Stock Watering: Normal livestock use at four tanks or less within one mile of well or spring. Stock watering pipelines and commercial feedlots are a miscellaneous use. Number of stock tanks?
  - Irrigation: Watering of commercially grown crops (Note: large-scale lawn watering of golf courses, cemeteries, recreation areas, etc., is miscellaneous use).
  - Municipal: Use of water in incorporated Towns and Cities. Note 1: use of water in unincorporated towns, subdivisions, improvement districts, mobile home parks, etc., is classified as miscellaneous use. Note 2: a permit may be required by the Wyoming Department of Environmental Quality (WDEQ) if the well will be classified as a public water supply under the WDEQ's rules and regulations.
  - Industrial: Long term use of water for the manufacture of a product or production of oil/gas or other minerals (oil field water flood operations, power plant water supply, etc.). (Describe in REMARKS.)
  - Miscellaneous: Any use of water not defined under previous definitions such as stock water pipelines, subdivisions, mine dewatering, mineral/oil exploration drilling, potable supplies in office, etc. Describe in REMARKS. Note: a permit may be required by the WDEQ if the well will be classified as a public water supply under the WDEQ's rules and regulations. Potable water for lots within Copperleaf Subdivision, Park County, Wyoming (See remarks)
  - Coalbed Methane: Water produced in the production of coalbed methane gas. Note: wells used in the production of coalbed methane will require a permit from the Wyoming Oil and Gas Conservation Commission.
  - Monitor, Observation Note: a WDEQ permit may be required.  Test Well (Describe in REMARKS.)

5. Location of the well or spring: (NOTE: Quarter-quarter (40 acre subdivision) MUST be shown. EXAMPLE: SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Sec. 12, Township 14 North, Range 68 West) a.s.  
Park County, NW  $\frac{1}{4}$ , NE  $\frac{1}{4}$  of Sec. 22, T. 52N., R. 105 W., of the 6<sup>th</sup> P.M. (or W.R.M.), Wyoming. If located in a platted subdivision, well located on common area of the Copperleaf Subdivision (or Add'n) of \_\_\_\_\_  
Resurvey location: Tract \_\_\_\_\_, or Lot \_\_\_\_\_ Res location Lot 2 *per GLO #*

6. Estimated depth of the well or spring is 100 ft. Estimated production interval is 25 ft. to 65 ft.

7. a. MAXIMUM instantaneous flow of water to be developed and beneficially used: 60.0 gallons per minute.  
NOTE: If for domestic and/or stock use, this application will be processed for a maximum of 25 gallons per minute. For a spring, after approval of this application, some type of artificial diversion or improvement must be constructed to qualify for a water right.  
b. MAXIMUM volumetric quantity of water to be developed and beneficially used per calendar year: 70 AF. Circle appropriate units: (Gallons) (Acre Feet) Note: A four person family utilizes approximately one (1) acre-foot of water per year or 325,000 gallons.

8. Mark the point(s) or area(s) of use in the tabulation box below.

TABULATION BOX

| Twp | Rng | Sec | NE $\frac{1}{4}$ |    |    |    | NW $\frac{1}{4}$ |    |    |    | SW $\frac{1}{4}$ |    |    |    | SE $\frac{1}{4}$ |    |    |    | TOTAL             |
|-----|-----|-----|------------------|----|----|----|------------------|----|----|----|------------------|----|----|----|------------------|----|----|----|-------------------|
|     |     |     | NE               | NW | SW | SE | NE               | NW | SW | SE | NE               | NW | SW | SE | NE               | NW | SW | SE |                   |
| 52  | 105 | 15  |                  |    |    |    |                  |    |    |    |                  |    | X  | X  |                  |    | X  | X  | A.C.A. P.C. Lot 8 |
|     |     | 22  | X                | X  | X  | X  | X                | X  |    |    |                  |    |    |    |                  |    |    |    | <i>per GLO #</i>  |
|     |     | 23  |                  |    |    |    | X                | X  | X  | X  |                  |    |    |    |                  |    |    |    |                   |

Water is to be used on all lots within Copperleaf Subdivision

170378

SEE REVERSE SIDE

Permit No. \_\_\_\_\_ Book No. 1242 Page No. 83

9. If for irrigation use:  
 a. Describe MAXIMUM acreage to be irrigated in each 40 acre subdivision in the tabulation box above.  
 b.  Land will be irrigated from this well only.  
 c.  Land is irrigated from existing water right(s) with water from this well to be additional supply. Describe existing water rights under REMARKS.
10. If for irrigation use, describe method of irrigation, i.e., center pivot sprinkler, flood, etc.: N/A
11. This well or spring is to be constructed on lands owned by The Worthington Group of Wyoming, LLC. (The granting of a permit does not constitute the granting of a right-of-way. If any easement or right-of-way is necessary in connection with this application. It should be understood that the responsibility is the applicant's. A copy of the agreement should accompany this application, if the land is privately owned and the owner is not the co-applicant.)

12. This water is to be used on lands owned by The Worthington Group of Wyoming, LLC. (If the landowner is not the applicant, a copy of the agreement relating to the usage of appropriated water on the land should be submitted to this office. If the landowner is included as co-applicant on the application, this procedure need not be followed.) NOTE: Water rights attach to the area(s) and/or point(s) of use. Water from this well will be commingled with the Copperleaf No. 2 well

REMARKS This well (1 of 2 - see related application) is proposed as an additional source of potable water for Copperleaf Subdivision having a permit for diversion of water from the North Fork Shoshone River (see Permit No. 33288). Water from this well will serve ~~15~~ 25 lots within the Copperleaf Development Park. Under penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief it is true, correct and complete.

  
 Todd A. Rhodes, President  
 Wyoming Water Rights Consulting, Inc.

09/19/05  
 Date

Per Development  
 Plan Fig. 2  
 Aug 2005  
 By Sage  
 Civil Engineering

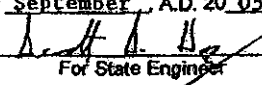
THE LEGALLY REQUIRED FILING FEE MUST ACCOMPANY THIS APPLICATION

|  |         |   |
|--|---------|---|
| DOMESTIC AND/OR STOCK WATERING USES:<br>(Domestic use is defined as use of water in 3 single family dwellings or less non commercial watering of lawns and gardens totaling one acre or less.) | \$25.00 |   |
| IRRIGATION, MUNICIPAL, INDUSTRIAL, MISCELLANEOUS, COALBED METHANE MONITOR (For water level measurements or chemical quality sampling) or TEST WELL   | \$50.00 | X |
|  | NO FEE  |   |

IF WELL WILL SERVE MULTIPLE USES, SUBMIT ONLY ONE (THE HIGHER) FILING FEE.

THIS SECTION IS NOT TO BE FILLED IN BY APPLICANT

THE STATE OF WYOMING )  
 ) ss.  
 STATE ENGINEER'S OFFICE )  
 This instrument was received and filed for record on the 21st day of September, A.D. 2005, at 10:00 clock A. M.  
 Permit No. U.W. 170379

  
 For State Engineer

THIS IS TO CERTIFY that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

This application is approved subject to the conditions that the proposed use shall not interfere with any existing rights to ground water from the same source of supply and is subject to regulation and correlation with surface water rights, if the ground and surface waters are interconnected. The use of water hereunder is subject to Wyoming Statutes, Title 41, and any subsequent amendments thereto, along with additional rules, regulations, and policies promulgated by the Wyoming State Engineer's Office.

Granting of a permit does not guarantee the right to have the water level or artesian pressure in the well maintained at any specific level and does not guarantee that the well will be considered adequate under Wyoming water law. The well should be constructed to a depth adequate to allow for the maximum development and beneficial use of ground water in the source of supply.

Minimum well construction guidelines as promulgated by the Wyoming State Engineer's Office will be followed during well siting, drilling, well completion, and well development, along with any additional or supplemental conditions required herein.

If the well is a flowing artesian well, it shall be so constructed and equipped that the flow may be shut off when not in use without loss of water into sub-surface formations or at the land surface.

Coalbed Methane wells have Additional Conditions and Limitations on attachment sheet.  
 FOR EDIT SEE ATTACHED STATUS SHEET

Approval of this application may be considered as authorization to proceed with construction of the proposed well or spring. A Statement of Completion will be filed within thirty (30) days of completion of construction, including pump installation.

Completion of construction and completion of the beneficial use of water for the purposes specified in item 4 of this application will be made by December 31, 2006.

The amount of appropriation shall be limited to the quantity to which permittee is entitled as determined at the time of proof of application of water to beneficial use.

Witness my hand this 4 day of November, A.D. 2005

  
 Patrick T. Tyrrell, State Engineer

PERMIT NO. U.W. 170379  
T.F. No. 38-2-212

## PERMIT STATUS

NOV 04 2005

Priority Date September 21, 2005

Approval Date \_\_\_\_\_

## ADDITIONAL CONDITIONS AND LIMITATIONS:

1. A meter acceptable to the State Engineer is required to accurately measure the total quantity of water produced from this well.
2. An annual report shall be submitted to the State Engineer no later than February 15 of each year stating the total amount of water produced from this well each month during the previous January 1 to December 31, twelve (12) month period.
3. The report shall identify the well by name, location, permit number and shall identify the type of meter used for the measurement.
4. The report shall contain at least two (2) semi-annual measurements of the static water level in the well as measured twenty-four (24) consecutive hours after pumping has ceased. The dates the measurements were obtained and the period of time the well was "shut-in" prior to obtaining the measurements must be specified.

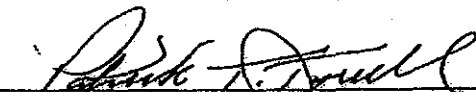
The water appropriated under this ground water permit and waters of North Fork Shoshone River and its tributaries have been determined to constitute one source of supply and the provisions of Section 41-3-916, Wyoming Statutes, shall apply as follows:

"41-3-916. Priority of rights when 1 source of supply. Where underground waters in different aquifers are so interconnected as to constitute in fact one source of supply, or where underground waters and the waters of surface streams are so interconnected as to constitute in fact one source of supply, priorities of rights to the use of such interconnected waters shall be correlated and such single schedule of priorities shall relate to the whole common water supply. The state engineer may by order adopt any of the corrective controls specified in section 17 of this act [41-3-915]. Source: Laws 1957, ch. 169, 18; W.S. 1957, 41-133."

As such, any required regulation of water rights of North Fork Shoshone River and its tributaries in the future shall consider this permit under the priority date shown, together with all other rights to use water from North Fork Shone River and its tributaries.

The State Engineer reserves the right, upon written request, to modify or waive all or any portion of these conditions and limitations.

November 4 2005  
Date of Approval

  
PATRICK T. TYRRELL, State Engineer  
SCAN-MICRO JAN 06 2006

Loren Smith  
715 East Roosevelt  
Riverton, WY 82501

C3391

**STATE OF WYOMING**  
 OFFICE OF THE STATE ENGINEER  
 HERSCHLER BLDG., 4-E CHEYENNE, WYOMING 82002  
 (307) 777-6163

**APPLICATION FOR PERMIT TO APPROPRIATE GROUND WATER**  
 APPLICATION FOR WELLS AND SPRINGS

Note: Only springs flowing 25 gallons per minute or less, where proposed use is domestic and/or stock watering, will be considered as ground water appropriations.

SCAN-MICRO JAN 06 2006

FOR OFFICIAL USE ONLY

Temporary Filing No. U.W. 32-2-212

PERMIT NO. U.W. 170380  
 WATER DISTRICT NO. 3 DISTRICT 9  
 U.W. DISTRICT Park Co.

NOTE: Do not fold this form. Use typewriter or print neatly with black ink.  
 ALL ITEMS MUST BE COMPLETED BEFORE APPLICATION IS ACCEPTABLE

NAME AND NUMBER OF WELL or SPRING Copperleaf No. 2 Well

1. Name of applicant(s) Bob Kudelski, The Worthington Group of Wyoming, LLC Phone: 307-527-5323

2. Address of applicant(s) P.O. Box 236, Cody, Wyoming 82450  
 (Mailing Address) (City) (State) (Zip)

3. Name & address of agent to receive correspondence and notices: Todd A. Rhodes, President, Wyoming Water Rights Consulting, Inc., P.O. Box 681, Worland, Wyoming 82401 Phone: 307-347-8329  
 (Mailing Address) (City) (State) (Zip)

4. Use to which the water will be applied:
- Domestic: Use of water in 3 single family dwellings or less, non-commercial watering of lawns and gardens totaling or houses served:
  - Stock Watering: Normal livestock use at four tanks or less within one mile of well or spring. Stock watering pipelines and commercial feedlots are a miscellaneous use. Number of stock tanks?
  - Irrigation: Watering of commercially grown crops (Note: large-scale lawn watering of golf courses, cemeteries, recreation areas, etc., is miscellaneous use).
  - Municipal: Use of water in incorporated Towns and Cities. Note 1: use of water in unincorporated towns, subdivisions, improvement districts, mobile home parks, etc., is classified as miscellaneous use. Note 2: a permit may be required by the Wyoming Department of Environmental Quality (WDEQ) if the well will be classified as a public water supply under the WDEQ's rules and regulations.
  - Industrial: Long term use of water for the manufacture of a product or production of oil/gas or other minerals (oil field water flood operations, power plant water supply, etc.). (Describe in REMARKS.)
  - Miscellaneous: Any use of water not defined under previous definitions such as stock water pipelines, subdivisions, mine dewatering, mineral/oil exploration drilling, potable supplies in office, etc. Describe in REMARKS. Note: a permit may be required by the WDEQ if the well will be classified as a public water supply under the WDEQ's rules and regulations. Potable water for lots within Copperleaf Subdivision, Park County, Wyoming
  - Coalbed Methane: Water produced in the production of coalbed methane gas. Note: wells used in the production of coalbed methane will require a permit from the Wyoming Oil and Gas Conservation Commission.
  - Monitor, Observation: Note: a WDEQ permit may be required.  Test Well (Describe in REMARKS.)

5. Location of the well or spring; (NOTE: Quarter-quarter (40 acre subdivision) MUST be shown. EXAMPLE: SE1/4NW1/4 of Sec. 12 Township 14 North, Range 68 West.) s.s.  
Park County NW 1/4 NW 1/4 of Sec. 22, T. 52N., R. 105 W., of the 6<sup>th</sup> P.M. (or W.R.M.), Wyoming. If located in a platted subdivision, well located on common area of the Copperleaf Subdivision (or Add'n) of \_\_\_\_\_  
Resurvey location: Tract \_\_\_\_\_ or Lot \_\_\_\_\_ Res. location lot 4 per G.L.O. #1

6. Estimated depth of the well or spring is 100 ft. Estimated production interval is 25 ft. to 85 ft.

7. a. MAXIMUM instantaneous flow of water to be developed and beneficially used: 60.0 gallons per minute.  
 NOTE: If for domestic and/or stock use, this application will be processed for a maximum of 25 gallons per minute. For a spring, after approval of this application, some type of artificial diversion or improvement must be constructed to qualify for a water right.  
 b. MAXIMUM volumetric quantity of water to be developed and beneficially used per calendar year: 70 AE. Circle appropriate units: (Gallons) (Acre Feet) Note: A four person family utilizes approximately one (1) acre-foot of water per year or 325,000 gallons.

8. Mark the point(s) or area(s) of use in the tabulation box below.

**TABULATION BOX**

| Tns | Rng | Sec | NE 1/4 |    |    |    | NW 1/4 |    |    |    | SW 1/4 |    |    |    | SE 1/4 |    |    |    | TOTAL |                     |
|-----|-----|-----|--------|----|----|----|--------|----|----|----|--------|----|----|----|--------|----|----|----|-------|---------------------|
|     |     |     | NE     | NW | SW | SE | NE     | NW | SW | SE | NE     | NW | SW | SE | NE     | NW | SW | SE |       |                     |
| 52  | 105 | 15  |        |    |    |    |        |    |    |    |        |    |    |    |        |    |    |    |       |                     |
|     |     | 22  | x      | x  | x  | x  | x      | x  |    |    |        |    |    | x  | x      |    |    | x  | x     | <u>AKA R.S. 618</u> |
|     |     | 23  |        |    |    |    | x      | x  | x  | x  |        |    |    |    |        |    |    |    |       | <u>per G.L.O.</u>   |

Water is to be used on all lots within Copperleaf Subdivision  
 SEE REVERSE SIDE

Permit No. 170380 Book No. 1242 Page No. 84

9. If for irrigation use:
- a. Describe MAXIMUM acreage to be irrigated in each 40 acre subdivision in the tabulation box above.
  - b.  Land will be irrigated from this well only.
  - c.  Land is irrigated from existing water right(s) with water from this well to be additional supply. Describe existing water rights under REMARKS.
10. If for irrigation use, describe method of irrigation, i.e., center pivot sprinkler, flood, etc.: N/A

1. This well or spring is to be constructed on lands owned by The Worthington Group of Wyoming, LLC. (The granting of a permit does not constitute the granting of a right-of-way. If any easement or right-of-way is necessary in connection with this application, it should be understood that the responsibility is the applicant's. A copy of the agreement should accompany this application, if the land is privately owned and the owner is not the co-applicant.)

12. This water is to be used on lands owned by The Worthington Group of Wyoming, LLC. (If the landowner is not the applicant, a copy of the agreement relating to the usage of appropriated water on the land should be submitted to this office. If the landowner is included as co-applicant on the application, this procedure need not be followed.) NOTE: Water rights attach to the area(s) and/or point(s) of use. Water from this well will be commingled with the copperleaf No. 1 well

REMARKS This well (1 of 2 - see related application) is proposed as an additional source of potable water for Copperleaf Subdivision having a permit for diversion of water from the North Fork Shoshone River (see Permit No. 33288). Water from this well will serve 121 lots within the Copperleaf Development park.

Under penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief it is true, correct and complete.

  
 Todd A. Rhodas, President  
 Wyoming Water Rights Consulting, Inc.

10/19/05  
 Date


Per development Plan  
 Fig. 2 Aug. 2005  
 by Sage Civil Engineering

THE LEGALLY REQUIRED FILING FEE MUST ACCOMPANY THIS APPLICATION

|  |         |   |
|--|---------|---|
| DOMESTIC AND/OR STOCK WATERING USES:<br>(Domestic use is defined as use of water in 3 single family dwellings or less non-commercial watering of lawns and gardens totaling one acre or less.) | \$25.00 |   |
| IRRIGATION, MUNICIPAL, INDUSTRIAL, MISCELLANEOUS, COALBED METHANE MONITOR (For water level measurements or chemical quality sampling) or TEST WELL   | \$50.00 | X |
|  | NO FEE  |   |

IF WELL WILL SERVE MULTIPLE USES, SUBMIT ONLY ONE (THE HIGHER) FILING FEE.

THIS SECTION IS NOT TO BE FILLED IN BY APPLICANT

THE STATE OF WYOMING )  
 ) ss.  
 STATE ENGINEER'S OFFICE )  
 This instrument was received and filed for record on the 21st day of September A.D. 2005 at 10:00 o'clock A. M.  
 permit No. U.W. 170380  
  
 For State Engineer

THIS IS TO CERTIFY that I have examined the foregoing application and do hereby grant the same subject to the following limitations and conditions:

This application is approved subject to the conditions that the proposed use shall not interfere with any existing rights to ground water from the same source of supply and is subject to regulation and correlation with surface water rights, if the ground and surface waters are interconnected. The use of water hereunder is subject to Wyoming Statutes, Title 41, and any subsequent amendments thereto, along with additional rules, regulations, and policies promulgated by the Wyoming State Engineer's Office.

Granting of a permit does not guarantee the right to have the water level or artesian pressure in the well maintained at any specific level and does not guarantee that the well will be considered adequate under Wyoming water law. The well should be constructed to a depth adequate to allow for the maximum development and beneficial use of ground water in the source of supply.

Minimum well construction guidelines as promulgated by the Wyoming State Engineer's Office will be followed during well siting, drilling, well completion, and well development, along with any additional or supplemental conditions required herein.

If the well is a flowing artesian well, it shall be so constructed and equipped that the flow may be shut off when not in use without loss of water into sub-surface formations or at the land surface.

Coalbed Methane wells have Additional Conditions and Limitations on attachment sheet.  
 ADDITIONAL CONDITIONS AND LIMITATIONS SEE ATTACHED STATUTE SHEET.

Approval of this application may be considered as authorization to proceed with construction of the proposed well or spring. A Statement of Completion will be filed within thirty (30) days of completion of construction, including pump installation.

Completion of construction and completion of the beneficial use of water for the purposes specified in item 4 of this application will be made by December 31, 2006.

The amount of appropriation shall be limited to the quantity to which permittee is entitled as determined at the time of proof of application of water to beneficial use.

Witness my hand this 4 day of November A.D. 2005  
  
 Patrick T. Tyrrell, State Engineer



PERMIT NO. U.W. 173380

T.F. No. 38-3-212

## PERMIT STATUS

Priority Date September 21, 2005Approval Date NOV 04 2005

## ADDITIONAL CONDITIONS AND LIMITATIONS:

1. A meter acceptable to the State Engineer is required to accurately measure the total quantity of water produced from this well.
2. An annual report shall be submitted to the State Engineer no later than February 15 of each year stating the total amount of water produced from this well each month during the previous January 1 to December 31, twelve (12) month period.
3. The report shall identify the well by name, location, permit number and shall identify the type of meter used for the measurement.
4. The report shall contain at least two (2) semi-annual measurements of the static water level in the well as measured twenty-four (24) consecutive hours after pumping has ceased. The dates the measurements were obtained and the period of time the well was "shut-in" prior to obtaining the measurements must be specified.

The water appropriated under this ground water permit and waters of North Fork Shoshone River and its tributaries have been determined to constitute one source of supply and the provisions of Section 41-3-916, Wyoming Statutes, shall apply as follows:

"41-3-916. Priority of rights when 1 source of supply. Where underground waters in different aquifers are so interconnected as to constitute in fact one source of supply, or where underground waters and the waters of surface streams are so interconnected as to constitute in fact one source of supply, priorities of rights to the use of such interconnected waters shall be correlated and such single schedule of priorities shall relate to the whole common water supply. The state engineer may by order adopt any of the corrective controls specified in section 17 of this act [41-3-915]. Source: Laws 1957, ch. 169, 18; W.S. 1957, 41-133."

As such, any required regulation of water rights of North Fork Shoshone River and its tributaries in the future shall consider this permit under the priority date shown, together with all other rights to use water from North Fork Shoshone River and its tributaries.

The State Engineer reserves the right, upon written request, to modify or waive all or any portion of these conditions and limitations.

November 4, 2005  
Date of Approval

  
\_\_\_\_\_  
PATRICK T. TYRRELL, State Engineer  
SCAN-MICRO JAN 06 2006

Loren Smith  
715 East Roosevelt  
Riverton, WY 82501

**STATE OF WYOMING**  
OFFICE OF THE STATE ENGINEER  
HERSCHLER BLDG., 4-E CHEYENNE, WYOMING 82002  
(307) 777-6163

**APPLICATION FOR PERMIT TO APPROPRIATE GROUND WATER**

APPLICATION FOR WELLS AND SPRINGS

Note: Only springs flowing 25 gallons per minute or less, where the proposed use is domestic and for stock watering, will be considered as ground water appropriations.

FOR OFFICE USE ONLY

Temporary Filing No. U.W. 32-7-495

PERMIT NO. U.W. 173457  
WATER DIVISION NO. 3 DISTRICT 9  
U.W. DISTRICT Park Co.

NOTE: Do not fold this form. Use typewriter or print neatly with black ink.  
ALL ITEMS MUST BE COMPLETED BEFORE APPLICATION IS ACCEPTABLE

NAME AND NUMBER OF WELL or SPRING Copperleaf # 3

- Name of applicant(s) Bob Kudelski, The Worthington Group of Wyoming, LLC Phone: 307-527-5323
- Address of applicant(s) P.O. Box 236 Wapiti WY 82450  
(MAILING ADDRESS) (CITY) (STATE) (ZIP)
- Name & address of agent to receive correspondence and notices Jeremy A. Easum-Sage Civil Engineering  
2824 Big Horn Avenue Cody WY 82414 Phone: 307-527-0915  
(MAILING ADDRESS) (CITY) (STATE) (ZIP)

- Use to which the water will be applied:
- Domestic: Use of water in 3 single family dwellings or less, noncommercial watering of lawns and gardens totaling one acre or less. Number of houses served? \_\_\_\_\_
  - Stock Watering: Normal livestock use at four tanks or less within one mile of well or spring. Stockwatering pipelines and commercial feedlots are a miscellaneous use. Number of stock tanks? \_\_\_\_\_
  - Irrigation: Watering of commercially grown crops (large-scale lawn watering of golf courses, cemeteries, recreation areas, etc., is miscellaneous use).
  - Municipal: Use of water in incorporated Towns and Cities. Note 1: use of water in unincorporated towns, subdivisions, improvement districts, mobile home parks, etc. is classified as miscellaneous use. Note 2: a permit may be required by the Wyoming Department of Environmental Quality (WDEQ) if the well will be classified as a public water supply under the WDEQ's rules and regulations.
  - Industrial: Long term use of water for the manufacture of a product or production of oil/gas or other minerals (oil field water flood operations, power plant water supply, etc.). (Describe in REMARKS)
  - Miscellaneous: Any use of water not defined under previous definitions such as stock water pipelines, subdivisions, mine dewatering, mineral/oil exploration drilling, potable supplies in office, etc. Describe in Remarks. Note: a permit may be required by the WDEQ if the well will be classified as a public water supply under the WDEQ's rules and regulations. Potable water for lots within Copperleaf Subdivision, Park County, Wyoming.
  - Coalbed Methane: Water produced in the production of coal bed methane gas. Note: wells used in the production of coal bed methane will require a permit from the Wyoming Oil and Gas Conservation Commission.
  - Monitor, Observation: Note: a WDEQ permit may be required  Test Well: (Describe in REMARKS)

Location of the well or spring; (NOTE: Quarter-quarter (40 acre subdivision) MUST be shown. EXAMPLE: SE 1/4 NW 1/4 of Sec. 2, Township 14 North, Range 66 West.)  
Park County, SE 1/4 NE 1/4 of Sec. 22, T. 52 N., R. 105 W. of the 6th P.M. (W.R.M.).  
Wyoming. If located in a platted subdivision, also provide Lot/Tract \_\_\_\_\_ Block \_\_\_\_\_ of the \_\_\_\_\_ subdivision (or Add'n) of \_\_\_\_\_. Resurvey Location: Tract \_\_\_\_\_, (or Lot) \_\_\_\_\_.

Estimated depth of the well or spring is 100 feet. Estimated production interval is 25 ft. to 65 ft.

- 1) MAXIMUM instantaneous flow of water to be developed and beneficially used: 60.0 gallons per minute. NOTE: if for domestic and / or stock use, this application will be processed for a maximum of 25 gallons per minute. For a spring, after approval of this application, some type of artificial diversion or improvement must be constructed to qualify for a water right.
- 2) MAXIMUM volumetric quantity of water to be developed and beneficially used per calendar year: 70 AF. Note appropriate units: (Gallons) (Acres Feet) A four person family utilizes approximately one (1) acre-foot of water per year = 325,000 gallons.

Mark the point(s) or area(s) of use in the tabulation box below. Note: Upper row refers to the quarter of the section. Next row refers to quarter of the quarter section. Water is to be used on all lots within Copperleaf Subdivision.

| RNG | SEC | NE 1/4 |        |        |        | NW 1/4 |        |        |        | SW 1/4 |        |        |        | SE 1/4 |        |        |        | TOTAL          |
|-----|-----|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|--------|----------------|
|     |     | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 | NE 1/4 | NW 1/4 | SW 1/4 | SE 1/4 |                |
| 105 | 15  |        |        |        |        |        |        |        |        |        |        | X      | X      |        |        | X      | X      |                |
|     | 22  | X      | X      | X      | X      | X      | X      |        |        |        |        |        |        |        |        |        |        | AKA R.S. lot # |
|     | 23  |        |        |        |        | XX     | X      | X      | X      |        |        |        |        |        |        |        |        | per G.L.O.     |

c.  Land is irrigated from existing water right(s) or water from this well to be additional supply. Describe existing water right(s) under REMARKS.

10. If for irrigation use, describe method of irrigation, i.e. center pivot sprinkler, flood, etc.: N/A

11. The well or spring is to be constructed on lands owned by The Worthington Group of Wyoming, LLC  
(The granting of a permit does not constitute the granting of right-of-way. If any easement or right-of-way is necessary in connection with this application, it should be understood that the responsibility is the applicant's. A copy of the agreement should accompany this application, if the land is privately owned and the owner is not the co applicant.)

The water is to be used on lands owned by The Worthington Group of Wyoming, LLC  
(If the landowner is not the applicant, a copy of the agreement relating to the usage of appropriated water on the land should be submitted to this office. If the landowner is included as co-applicant on the application, this procedure need not be followed.) NOTE: Water rights attach to the area(s) and/or point(s) of use.

REMARKS: Water from this well will serve the lots within the Copperleaf Subdivision, Park County, Wyoming. Water from this well will be commingled with (Copperleaf No. 1) & (Copperleaf No. 2 wells.)

Under from this permit No. U.W. 170379 (Copperleaf No. 1) & permit No. U.W. 170380 (Copperleaf No. 2 wells.)  
I will serve 131 lots within the Copperleaf Development Park. Per Development Plan filed Aug 2005 by Sage & under penalties of perjury, I declare that I have examined this application and to the best of my knowledge and belief it is correct and complete.

Jeremy A. Basum  
Signature of Applicant or Authorized Agent  
Date March 3, 2006

**Jeremy A. Basum - Sage Civil Engineering**  
**THE LEGALLY REQUIRED FILING FEE MUST ACCOMPANY THIS APPLICATION**

|   |         |
|---|---------|
| DOMESTIC AND/OR STOCK WATERING USES<br>(Domestic use is defined as use of water in 3 single family dwellings or less, noncommercial watering of lawns and gardens totaling one acre or less.) | \$25.00 |
| IRRIGATION, MUNICIPAL, INDUSTRIAL, MISCELLANEOUS, COAL BED METHANE  | \$50.00 |
| MONITOR (For water level measurements or chemical quality sampling) or TEST WELL  | No Fee  |

**IF WELL WILL SERVE MULTIPLE USES, SUBMIT ONLY ONE (THE HIGHER) FILING FEE.**  
**THIS SECTION IS NOT TO BE FILLED IN BY APPLICANT**

STATE OF WYOMING )  
 ) ss.  
STATE ENGINEER'S OFFICE )  
This instrument was received and filed for record on the 5th day of March, A.D. 06, at 10:00 o'clock A. M.

No. U.W. 173457  
Patrick T. Tyrrell  
for State Engineer

STATE ENGINEER IS TO CERTIFY that I have examined the foregoing application and do hereby grant the same subject to the following limitations conditions:

- application is approved subject to the condition that the proposed use shall not interfere with any existing rights to ground water from same source of supply and is subject to regulation and correlation with surface water rights, if the ground and surface waters are connected. The use of water hereunder is subject to the further provisions of Chapter 169, Session Laws of Wyoming, 1957, and any subsequent amendments thereto.
  - granting of a permit does not guarantee the right to have the water level or artesian pressure in the well maintained at any specific level. Well should be constructed to a depth adequate to allow for the maximum development and beneficial use of ground water in the zone of supply.
  - if well is a flowing artesian well, it shall be so constructed and equipped that the flow may be shut off when not in use without loss of water into sub-surface formations or at the land surface.
- Red Methane wells have Additional Conditions and Limitations on attachment sheet.**  
**ADDITIONAL CONDITIONS AND LIMITATIONS SEE ATTACHED STATUS SHEET.**

Approval of this application may be considered as authorization to proceed with construction of the proposed well or spring. A Statement of Completion will be filed within thirty (30) days of completion of construction, including pump installation.

Termination of construction and completion of the beneficial use of water for the purposes specified in Item 4 of this application will be by December 31, 2007.

The amount of appropriation shall be limited to the quantity to which permittee is entitled as determined at time of proof of application of water to beneficial use.

Witness my hand this 16 day of March, A.D. 2006.

Patrick T. Tyrrell  
PATRICK T. TYRRELL, State Engineer

PERMIT NO. U.W. 173457  
T.F. No. 38-7-495

PERMIT STATUS

Priority Date March 6, 2006 Approval Date MAR 16 2006

ADDITIONAL CONDITIONS AND LIMITATIONS:

The water appropriated under this ground water permit and waters of North Fork Shoshone River and its tributaries have been determined to constitute one source of supply and the provisions of Section 41-3-916, Wyoming Statutes, shall apply as follows:

"41-3-916. Priority of rights when 1 source of supply. Where underground waters in different aquifers are so interconnected as to constitute in fact one source of supply, or where underground waters and the waters of surface streams are so interconnected as to constitute in fact one source of supply, priorities of rights to the use of such interconnected waters shall be correlated and such single schedule of priorities shall relate to the whole common water supply. The state engineer may by order adopt any of the corrective controls specified in section 17 of this act [41-3-915]. Source: Laws 1957, ch. 169, 18; W.S. 1957, 41-133."

As such, any required regulation of water rights of North Fork Shoshone River and its tributaries in the future shall consider this permit under the priority date shown, together with all other rights to use water from North Fork Shoshone River and its tributaries.

1. A meter acceptable to the State Engineer is required to accurately measure the total quantity of water produced from this well.
2. An annual report shall be submitted to the State Engineer no later than February 15 of each year stating the total amount of water produced from this well each month during the previous January 1 to December 31, twelve (12) month period.
3. The report shall identify the well by name, location, permit number and shall identify the type of meter used for the measurement.
4. The report shall contain at least two (2) semi-annual measurements of the static water level in the well as measured twenty-four (24) consecutive hours after pumping has ceased. The dates the measurements were obtained and the period of time the well was "shut-in" prior to obtaining the measurements must be specified.
5. The State Engineer reserves the right, upon written request, to modify or waive all or any portion of these conditions and limitations.

March 16, 2006  
Date of Approval

Patrick T. Tyrrell  
PATRICK T. TYRRELL, State Engineer

LOREN SMITH  
715 EAST ROOSEVELT  
RIVERTON, WY 82501

# Exhibit J

WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY  
WATER QUALITY DIVISION  
PERMIT TO CONSTRUCT

PERMIT NO. 06-274RR

REFERENCE NO. 06-236RR

Copperleaf Subdivision Water Supply, Treatment, Storage, and Booster Pumping Systems

This permit hereby authorizes the applicant:

Robert Kudelski  
Worthington Group of Wyoming, LLC  
P.O. Box 236  
Wapiti, WY 82450

to install a surface water infiltration gallery, raw water pumps and pipeline; three water supply wells, pumps, and transmission lines; raw water treatment including microfiltration; disinfection; three 35,000 gallon finished water storage tanks; a booster pump system; and all specified controls and alarms according to the procedures and conditions of the application number 06-274RR. The facilities are located within the N ½ Section 22, Township 52 North and Range 105 West in the county of Park, in the State of Wyoming. All construction, installation, or modification allowed by this permit shall be completed by October 5, 2011.

The issuance of this permit confirms that the Wyoming Department of Environmental Quality (DEQ) has evaluated the application submitted by the permittee and determined that it meets minimum applicable construction and design standards. The compliance with construction standards and the operation and maintenance of the facility to meet the engineer's design are the responsibility of the permittee, owner, and operator.

Granting this permit does not imply that DEQ guarantees or ensures that the permitted facility, when constructed, will meet applicable discharge permit conditions or other effluent or operational requirements. Compliance with discharge standards remains the responsibility of the permittee.

Nothing in this permit constitutes an endorsement by DEQ of the construction or the design of the facility described herein. This permit verifies only that the submitted application meets the design and construction standards imposed by Wyoming statutes, rules and regulations. The DEQ assumes no liability for, and does not in any way warrant or guarantee the performance or operation of the permitted facility. The permittee, owner and operator are solely responsible for any liability arising from the construction or operation of the permitted facility. By issuing this permit, the State of Wyoming does not waive its sovereign immunity.

The permittee shall allow authorized representatives from DEQ to enter and inspect any property, premise or place or at which the facility is located or is being constructed or installed for the purpose of investigating actual or potential sources of water pollution, and for determining compliance or non-compliance with any rules, regulations, standards, permits or orders.

Nothing in this permit shall be construed to preclude the institution of any legal action or other proceeding to enforce any applicable provision of law or rules and regulations. It is the duty of the permittee, owner and operator to comply with all applicable federal, state and local laws or regulations in the exercise of its activities authorized by this permit.

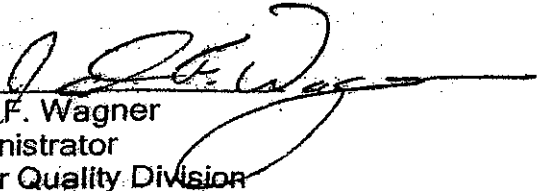
The issuance of this permit does not convey any property rights in either real or personal property or any invasion of personal rights, or any infringement of federal, state or local laws or regulations.

The permittee shall construct and operate the permitted facility in accordance with the statements, representations, procedures, terms and conditions of the permit application, supporting documents and permit. This permit does not relieve the permittee from any duty to obtain any other permit or authorization that may be required by any provision of federal, state or local laws.

In carrying out its activities authorized by this permit, the permittee, owner and operator shall comply with all of the following permit conditions:

- 1 of 6 The applicant will provide immediate oral or written notice to the Wyoming Department of Environmental Quality, Water Quality Division (DEQ/WQD), Northwest District Engineer, 250 Lincoln Street, Lander, WY 82520, 307-332-3144, FAX 307-332-3183, in accordance with the provisions of Section 11, Chapter 3, Wyoming Water Quality Rules and Regulations of any changes or modifications which are not consistent with the terms and conditions of this permit.
- 2 of 6 Within sixty days of completion of construction of the authorized facility, the applicant will submit to the Northwest District a certification of completion signed by the Engineer of Record or the owner. A form titled "Certificate of Completion" has been provided.
- Date that construction of the facility was completed; and
  - Date that the facility was placed in operation; and
  - Certification the facility was constructed in accordance with the terms and conditions of the permit; or
  - Certification the facility was completed with changes or modifications. Submittal of as-constructed plans and specifications for the system as it was constructed, certified by an engineer if appropriate is required. All modifications or deviations from the authorized plans must be highlighted.
- 3 of 6 The review and approval of this permit is based upon the items identified in the attached "Statement of Basis".
- 4 of 6 Due to the complexity of these facilities, the permittee and their successors must employ licensed operators meeting the requirements of Chapter 5 of the Wyoming Water Quality Rules and Regulations.
- 5 of 6 The permittee must submit draft and final Operations and Maintenance (O&M) manuals meeting the schedule and requirements of Chapter 12, Section 16, of the Wyoming Water Quality Rules and Regulations.
- 6 of 6 All well test data will be provided to the DEQ/WQD Northwest District Engineer within 30 days or completion of the wells and receipt of analytical data.

AUTHORIZED BY:

  
John F. Wagner  
Administrator  
Water Quality Division

  
John V. Corra  
Director  
Department of Environmental Quality

October 5, 2006  
Date of Issuance  
H/rm/6-0918

## STATEMENT OF BASIS

1. Permit Number: 06-274RR
2. Application reviewed for compliance with the following regulations:  
Chapters 3 and 12 of the Wyoming Water Quality Rules and Regulations.
3. Does the permit comply with all applicable regulations identified above? yes
4. Facilities include components not specifically covered by regulations and approval is based upon a deviation from applicable regulations in accordance with Section 5 of applicable regulations.

Yes

The microfiltration system and on-site generation of chlorine is not addressed in Chapter 12. As such, a Section 5 review was done to verify that the data obtained from full scale, comparable installations demonstrated the acceptability of the design.

5. Documentation of Statement of Basis: The archive file for this permit includes adequate documentation of all sections of this Statement of Basis.

## CERTIFICATION

The issuance of this permit is based upon a review of the application package submitted in accordance with the requirements of Chapter 3, Section 6, Wyoming Water Quality Rules and Regulations. This review was performed by Jeff Hermansky, jherma@state.wy.us, NW District Engineering Supervisor and completed on October 5, 2006. Permit issuance is recommended based upon statements, representations, and procedures presented in the permit application and supporting documents, permit conditions, and the items identified in this "Statement of Basis."

xc: Debra Wendtland, Wendtland & Wendtland LLP



# Exhibit K

Proceedings of a regular meeting of the Board of County Commissioners of Park County, Wyoming, held at Cody, Wyoming, on Tuesday, March 7, 2006.

The Board of County Commissioners met on Tuesday, March 7, 2006. Present were Chairman Fontaine, Commissioners Hall and French and County Clerk Carter.

\*\*\*\*\*

The following bills were presented, allowed and ordered paid:

|                                      |    |           |
|--------------------------------------|----|-----------|
| A-1 ELECTRIC -----                   | \$ | 195.56    |
| A T & T - CORP. -----                | \$ | 235.67    |
| A T & T - CORP. -----                | \$ | 71.98     |
| A V CENTER -----                     | \$ | 10,121.00 |
| ACE HARDWARE -----                   | \$ | 470.74    |
| AERONAUT AUTOMOTIVE LLC -----        | \$ | 1,468.08  |
| AFLAC, INC. -----                    | \$ | 1,286.07  |
| ALBANESE, RICHARD -----              | \$ | 472.50    |
| ALBERTSON'S PHARMACY #807 -----      | \$ | 250.06    |
| ALDRICH'S - CODY -----               | \$ | 944.76    |
| ALLISON, JAMES S. -----              | \$ | 187.50    |
| ALSCO -AMERICAN LINEN DIVISION ----- | \$ | 92.07     |
| ALM INDUSTRIES INC. -----            | \$ | 859.14    |
| AMERICAN HOTEL REGISTER CO -----     | \$ | 302.88    |
| APCO, AFC INC -----                  | \$ | 4,900.00  |
| BASIN TIRE -----                     | \$ | 453.59    |
| BANK OF THE WEST -----               | \$ | 450.00    |
| BEAR CO., INC. -----                 | \$ | 3,808.55  |
| BEARTOOTH ELEC. CO-OP, INC. -----    | \$ | 34.53     |
| BEARTOOTH HEALTH CARE -----          | \$ | 142.00    |
| BEDUHN, NICK -----                   | \$ | 1,837.50  |
| BEST WESTERN RAMKOTA HOTEL -----     | \$ | 147.56    |
| BI INC. -----                        | \$ | 70.20     |
| BIG HORN PAINT, INC. -----           | \$ | 161.19    |
| BIGHORN CARPET ONE, INC. -----       | \$ | 34,052.40 |
| BIG HORN COUNTY JAIL -----           | \$ | 5,950.00  |
| BIG HORN RURAL ELECTRIC CO. -----    | \$ | 215.38    |
| BIG HORN REDI-MIX, INC. -----        | \$ | 9,879.00  |
| BLUE CROSS BLUE SHIELD OF WY -----   | \$ | 9.20      |
| BILLINGS GAZETTE, INC. -----         | \$ | 237.30    |
| BIG HORN WHOLESALE, INC. -----       | \$ | 1,420.73  |
| BIG VALLEY BEARING & SUPP. INC ----- | \$ | 373.13    |
| BLAKEMAN PROPANE, INC. -----         | \$ | 1,088.67  |
| BLAIR'S MARKET -----                 | \$ | 41.25     |
| BORMUTH LAW ASSOCIATES -----         | \$ | 24.75     |
| BOYS & GIRLS CLUB OF PARK CO -----   | \$ | 2,262.50  |
| BOWLES, CLAIRE -----                 | \$ | 22.28     |
| BRANDT, DOUGLAS -----                | \$ | 211.94    |
| BRANSBY, KENNETH -----               | \$ | 2,084.25  |
| BRESNAN COMMUNICATIONS -----         | \$ | 21,063.51 |
| BRUCO, INC. -----                    | \$ | 6,861.69  |
| BRUCE, ROY -----                     | \$ | 12.62     |
| BUTANE POWER & EQUIPMENT CO. -----   | \$ | 59.50     |
| CAMPBELL'S REPAIR & COLLISION -----  | \$ | 36.98     |
| CARQUEST OF CODY WY #3106 -----      | \$ | 243.12    |
| CARQUEST OF POWELL -----             | \$ | 532.22    |
| CDW GOVERNMENT, INC. -----           | \$ | 7,961.66  |
| CELLULARONE -----                    | \$ | 1,367.41  |
| CENTER FOR BREASTFEEDING, THE -----  | \$ | 400.00    |
| CHUCK'S LAWN CARE -----              | \$ | 3,600.00  |
| CITY OF CODY -----                   | \$ | 15,365.68 |
| CITY OF POWELL -----                 | \$ | 847.46    |
| CIVIC RESEARCH INSTITUTE, INC. ----- | \$ | 169.95    |
| CODY COUNCIL ON AGING -----          | \$ | 4,166.66  |
| CODY DAIRY SERVICE -----             | \$ | 608.30    |
| CODY ENTERPRISE -----                | \$ | 2,562.31  |
| COMMUNITY COUNSELING SER., INC ----- | \$ | 750.00    |
| COMMUNITY HOME OXYGEN -----          | \$ | 25.00     |
| CODY WORKFORCE SERVICES -----        | \$ | 591.66    |

01579

|  |               |
|--|---------------|
| CONOCOPHILIPS, INC. -----              | \$ 448.84     |
| CONNERS, MICHAEL -----                 | \$ 143.10     |
| COPENHAVER, KATH, KTCN, KLETCKE -----  | \$ 2,477.50   |
| COUNTRY CORNER UPHOLSTERY -----        | \$ 1,200.00   |
| CRAFCO INC -----                       | \$ 16,539.00  |
| CRISIS INTERVENTION SERVICES -----     | \$ 2,011.11   |
| CRETEX CONCRETE PRODUCTS WEST -----    | \$ 101,775.60 |
| CRYSTAL CLEAR BTTLLED WATER, INC ----- | \$ 16.38      |
| CTA ARCHITECTS -----                   | \$ 11,315.97  |
| CURT'S CARS -----                      | \$ 116.72     |
| CUSTOM CAGE -----                      | \$ 270.00     |
| D.A.R.E. AMERICA MERCHANDISE -----     | \$ 671.27     |
| DAYLIGHT DONUT -----                   | \$ 14.00      |
| DEACONESS BILLINGS CLINIC -----        | \$ 234.00     |
| DELL MARKETING CORP. -----             | \$ 4,347.98   |
| DENNY'S GUNS & MAPS -----              | \$ 3,094.00   |
| DICK JONES TRUCKING -----              | \$ 25,500.00  |
| MCCARTY AND REED, ATTYS AT LAW -----   | \$ 480.00     |
| EDGE, RUTH -----                       | \$ 293.84     |
| EASTGATE CLEANERS -----                | \$ 999.00     |
| EDWARDS, CHRIS -----                   | \$ 510.00     |
| EFM, INC -----                         | \$ 41,805.17  |
| ELECTRO-COMM DISTRIBUTING, INC -----   | \$ 184.38     |
| WY. DEPT. OF EMPLOYMENT -----          | \$ 3,650.80   |
| ENERGY WEST WYOMING -----              | \$ 19,335.60  |
| ENGRAVING, AWARDS, & GIFTS.COM -----   | \$ 611.00     |
| ETSCORN, DYLAN -----                   | \$ 37.48      |
| FED EX -----                           | \$ 49.12      |
| FLORY, RAND M.D. -----                 | \$ 44.00      |
| FONTAINE, MARIE -----                  | \$ 120.04     |
| FRAZIER, ANDREW -----                  | \$ 9.79       |
| FREMONT COUNTY SHERIFF'S OFFCE -----   | \$ 6,500.00   |
| FREMONT MOTOR POWELL, INC. -----       | \$ 241.72     |
| FREMONT MOTOR CODY, INC. -----         | \$ 5,351.17   |
| FRENCH, TIM -----                      | \$ 135.60     |
| FRENCH, TIM -----                      | \$ 145.37     |
| FSH COMMUNICATIONS, LLC -----          | \$ 130.00     |
| FUEL DEPOT, INC. -----                 | \$ 2,740.45   |
| GALLS INCORPORATED -----               | \$ 240.45     |
| GAMBLES--STORE 4234, INC. -----        | \$ 11.99      |
| GARLAND LIGHT & POWER CO. -----        | \$ 1,230.00   |
| GARRISON, G. MARK -----                | \$ 400.00     |
| GARY'S -----                           | \$ 183.85     |
| GATES, SHARON -----                    | \$ 69.42      |
| GENERATION X, INC. -----               | \$ 1,537.50   |
| GILLETTE CAMPUS OF SHERIDAN -----      | \$ 785.03     |
| GISOLDI, ALEX P -----                  | \$ 84.23      |
| GLOCK, INC. -----                      | \$ 1,312.00   |
| GLOBAL EQUIPMENT COMPANY -----         | \$ 288.20     |
| GLOBALSTAR USA, INC. -----             | \$ 24.95      |
| GLOBIAL INDUSTRIAL -----               | \$ 288.20     |
| GORDON'S OIL CO., INC. -----           | \$ 1,536.27   |
| ORCHARD TRUST COMPANY -----            | \$ 4,170.00   |
| H & H BUSINESS SYSTEM INC. -----       | \$ 685.85     |
| HANCOCK, CHARLES -----                 | \$ 20.00      |
| HALL, THOMAS "BUCKY" -----             | \$ 469.33     |
| HANSON CHEMICAL INC. -----             | \$ 6,889.07   |
| HEADSETS.COM, INC -----                | \$ 352.90     |
| HENDERSON, TYE. L & TAMMI R -----      | \$ 990.29     |
| HK ENTERPRISES INC -----               | \$ 10,011.00  |
| HOFFERT, DAVE -----                    | \$ 13.29      |
| HONNEN EQUIPMENT CO. -----             | \$ 402.39     |
| HOFFMANN, KENNETH A. D.D.S. -----      | \$ 200.00     |
| HOLIDAY INN, INC. -----                | \$ 73.67      |
| HOLIDAY INN CHEYENNE, INC. -----       | \$ 395.89     |
| IAAO -----                             | \$ 175.00     |
| INTERSTATE BRANDS CORP. -----          | \$ 538.24     |
| INTERMOUNTAIN RECORD CNTR, INC -----   | \$ 27.93      |
| INTERSTATE TIRE SERV. INC -----        | \$ 240.00     |
| IPLUS -----                            | \$ 100.00     |
| JAMIESON, M.D., CHARLES E -----        | \$ 500.00     |
| JACK'S TRUCK & EQUIPMENT, INC. -----   | \$ 21.77      |
| JACKSON, MATT -----                    | \$ 5.34       |

|                                       |    |            |
|---------------------------------------|----|------------|
| JOHNSON, MELISSA -----                | \$ | 334.52     |
| K-B COMMERCIAL PRODUCTS -----         | \$ | 455.85     |
| KAHL, DICK L. -----                   | \$ | 762.50     |
| KLOEFKORN-BALLARD CONST., INC. -----  | \$ | 13,250.85  |
| KEELE SANITATION -----                | \$ | 610.00     |
| KEEFER, ELIZABETH -----               | \$ | 48.36      |
| KEEGAN & WINSLOW P.C. -----           | \$ | 225.00     |
| KING, TERI L -----                    | \$ | 2,053.36   |
| KINCHELOE PLUMBING & HEATING -----    | \$ | 64.69      |
| LASON SYSTEMS, INC. -----             | \$ | 2,127.00   |
| LEON UNIFORM COMPANY, INC. -----      | \$ | 352.50     |
| LINTON'S BIG R, INC. -----            | \$ | 130.19     |
| LOEPER, JESSICA -----                 | \$ | 4,890.00   |
| LYLE SIGNS, INC. -----                | \$ | 7,041.80   |
| M DIAMOND W -----                     | \$ | 84.00      |
| MAGARGAL III, GEORGE E -----          | \$ | 332.12     |
| MAJESTIC LUBE, INC. -----             | \$ | 179.25     |
| MARC, CORP. -----                     | \$ | 230.01     |
| MAXWELL'S, INC. -----                 | \$ | 261.30     |
| WRM CONSULTING, LLC -----             | \$ | 2,777.77   |
| MCCUMBER LOCKSMITH SHOP -----         | \$ | 10.50      |
| MC NEIL CONCRETE, INC -----           | \$ | 16,784.83  |
| MED-TECH RESOURCE, INC -----          | \$ | 108.74     |
| MEDICAL CENTER PHARMACY -----         | \$ | 2,010.19   |
| MEETEETSE ECONOMIC DEVELOPMENT -----  | \$ | 6,525.00   |
| MICKELSON, JOSEPH D. -----            | \$ | 100.00     |
| MMS - MIDWEST MEDICAL SUPPLY -----    | \$ | 109.60     |
| MORRISON, MARION -----                | \$ | 60.03      |
| MONTANA-DAKOTA UTILITIES CO. -----    | \$ | 2,421.68   |
| MOTOR PARTS, INC. -----               | \$ | 164.25     |
| MOTOR POWER EQUIPMENT -----           | \$ | 1,249.55   |
| MOORE, LEONARD D.D.S. -----           | \$ | 745.26     |
| MORENO, NANCY -----                   | \$ | 105.91     |
| MURPHY, KATE -----                    | \$ | 64.53      |
| NAPA AUTO PARTS -----                 | \$ | 273.34     |
| NATL BUSINESS FURNITURE, INC. -----   | \$ | 13,288.62  |
| NETLINK SATELLITE -----               | \$ | 19.99      |
| NEW DAWN TECHNOLOGIES INC. -----      | \$ | 690.00     |
| NORTHWEST RURAL WATER DISTRICT -----  | \$ | 69.80      |
| NORTHWEST RIVER SUPPLIES, INC. -----  | \$ | 275.05     |
| NORTHWEST WY FAMILY PLANNING -----    | \$ | 716.66     |
| NORTHWEST COLLEGE -----               | \$ | 150.00     |
| OFFICE SHOP THE -----                 | \$ | 250.07     |
| ONE EIGHTY COMMUNICATIONS, INC -----  | \$ | 278.00     |
| PACIFIC POWER -----                   | \$ | 998.09     |
| PAGE, FRANK -----                     | \$ | 466.36     |
| PARK COUNTY CLERK -----               | \$ | 2.00       |
| PARK CO. EMP. BENEFIT - VISION -----  | \$ | 1,280.00   |
| PARK CO. EMP. BENEFIT TRUST -----     | \$ | 113,361.30 |
| PARK CO. FLEX SPND BENEFIT ACCT ----- | \$ | 3,003.35   |
| PARK CO. SHERIFF -----                | \$ | 166.75     |
| PARKO, JOHN -----                     | \$ | 74.39      |
| PATRICK, NIC -----                    | \$ | 120.00     |
| PATRICK, NIC -----                    | \$ | 60.09      |
| PAVEMENT MAINTENANCE, INC. -----      | \$ | 31,622.00  |
| PETE DEHAAN ELECTRONICS -----         | \$ | 3,451.17   |
| PERRINE, BARBARA -----                | \$ | 42.50      |
| PEAK ENVIRONMENTAL MGT., INC. -----   | \$ | 4,440.00   |
| PILCH ENGINEERING & SURVEYING -----   | \$ | 2,712.00   |
| PLAINS HOTEL -----                    | \$ | 95.26      |
| PLAN ONE / ARCHITECTS, INC. -----     | \$ | 2,812.22   |
| PMCH, CORP. -----                     | \$ | 7,900.00   |
| POWELL DRUG, INC. -----               | \$ | 230.96     |
| POWELL HOSPITAL -----                 | \$ | 42.40      |
| POWELL LOCKS & SECURITY -----         | \$ | 16.00      |
| POWELL OFFICE SUPPLY, INC. -----      | \$ | 2,495.23   |
| POSTMASTER -----                      | \$ | 78.00      |
| POSTMASTER -----                      | \$ | 132.00     |
| PRESTON, LYNELL -----                 | \$ | 13.95      |
| POWELL SR CITIZENS AGO-GO, INC -----  | \$ | 4,166.67   |
| POWELL TRIBUNE, INC. -----            | \$ | 3,655.34   |
| POWELL VALLEY HARDWARE -----          | \$ | 34.74      |
| POWELL VALLEY ECON. DEV. ALL. -----   | \$ | 16,900.00  |

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|                                 |              |
|---------------------------------|--------------|
| PRANTE, WILLIAM & VICKIE L      | \$ 778.17    |
| PRODUCTION MACHINE CORP.        | \$ 258.52    |
| PROJECT TELEPHONE COMPANY, INC  | \$ 44.85     |
| PRONGHORN LODGE                 | \$ 55.00     |
| SIGGINS, ALAN                   | \$ 109.20    |
| SIGGINS, ALAN                   | \$ 160.00    |
| QUILL                           | \$ 51.98     |
| Q WEST                          | \$ 9,605.24  |
| QUIZNOS                         | \$ 45.91     |
| PITNEY BOWES - RESERVE ACCOUNT  | \$ 10,127.00 |
| RAMEY, DANNY                    | \$ 12.84     |
| RAMEY, VIRGINIA L.              | \$ 10.60     |
| RATCLIFF, ELMER & DELILAH       | \$ 204.25    |
| MCCARTY AND REED, ATTYS AT LAW  | \$ 221.36    |
| RED EAGLE OIL COMPANY, INC.     | \$ 21,581.54 |
| RICE KILROY CONSTRUCTION INC    | \$ 30,870.18 |
| RIMROCK TIRE COMPANY, INC.      | \$ 818.65    |
| ROBINSON CONSTRUCTION           | \$ 6,731.09  |
| ROHRBACH, WILLIAM P.            | \$ 300.00    |
| ROGER'S SPORT CENTER            | \$ 971.96    |
| ROYAL, RANDY L.                 | \$ 145.61    |
| RUYLE, CHARLES JR & LEEANN      | \$ 847.72    |
| SAGE CIVIL ENGINEERING, INC.    | \$ 2,926.50  |
| SANDERS PLUMBNG & HEATNG, INC.  | \$ 48.00     |
| SCHMALZ FENCE CO.               | \$ 1,961.00  |
| SCHRADER METAL & DESIGN, INC.   | \$ 19.87     |
| SEARS COMMERCIAL ONE            | \$ 4,302.44  |
| SELBY'S, INC.                   | \$ 281.60    |
| SHIPP, RHONDA                   | \$ 97.32     |
| SHOSHONE IRRIGATION DSTRCT, INC | \$ 5,723.47  |
| SHOSHONE OFFICE SUPPLY, INC.    | \$ 21,621.52 |
| SIAHAYA, KRISTI                 | \$ 13.35     |
| SIMMONS, JEREMY W.              | \$ 7.02      |
| SIMPSON, WILLIAM L.             | \$ 400.00    |
| SIRCHIE FINGER PRINT LABS, INC  | \$ 33.70     |
| SIT 4 LESS.COM                  | \$ 929.00    |
| SMITH, J. TRAVIS                | \$ 1,292.50  |
| SPARGUR, DENNIS                 | \$ 115.00    |
| SPEAR CONSTRUCTION, INC.        | \$ 2,622.03  |
| SPORKIN, TERRI M.               | \$ 120.00    |
| SPORKIN, TERRI M.               | \$ 88.11     |
| SPIRIT MTN. AVIATION, INC.      | \$ 42.52     |
| ST. VINCENT HEALTHCARE, INC.    | \$ 500.00    |
| STAY ONLINE                     | \$ 276.00    |
| SUNLIGHT FEDERAL CREDIT UNION   | \$ 13,608.48 |
| SYSCO MONTANA INC               | \$ 2,633.15  |
| TAYLOR, DAVID D.D.S.            | \$ 109.00    |
| TEE'S PLUS                      | \$ 183.38    |
| TCT WEST TELEPHONE CO., INC     | \$ 146.81    |
| THE UPS STORE                   | \$ 5.79      |
| THOMAS R.N., ALAN               | \$ 240.00    |
| THOMPSON, MARC C.               | \$ 877.50    |
| WEBSTER & THOMPSON LLC          | \$ 1,815.00  |
| TOWN OF MEETEETSE               | \$ 62.00     |
| STROH'S INDUSTRIAL LUBRICATION  | \$ 840.00    |
| TRI STATE TRUCK & EQUIP, INC    | \$ 138.58    |
| TRACTOR & EQUIPMENT CO          | \$ 7,130.17  |
| TROLLINGER, ROBERT R & CLAT T   | \$ 785.57    |
| UNIVERSITY OF WYOMING           | \$ 55.00     |
| UNICOMP, INC                    | \$ 362.19    |
| UNITED BUILDING CENTERS         | \$ 224.93    |
| UNIVERSAL PRODUCTS INC.         | \$ 1,051.51  |
| INTERSTATE BUSINESS PRODUCTS    | \$ 2,317.00  |
| VALLEY WELDERS & IND SUPPLY     | \$ 72.09     |
| VERALDI PH.D., DONNA M.         | \$ 900.00    |
| VERIZON WIRELESS                | \$ 484.38    |
| VIKING OFFICE PRODUCTS          | \$ 483.68    |
| WACASER, TROY                   | \$ 103.46    |
| WAGERS, JOE                     | \$ 7.85      |
| WALMART COMMUNITY BRC, INC.     | \$ 2,058.03  |
| WALTON, DERRIK, DDS, PC         | \$ 924.00    |
| WEBSTER & THOMPSON, LLC         | \$ 67.50     |
| WEBSTER MOTORS, INC.            | \$ 104.40    |

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|                                       |    |                |
|---------------------------------------|----|----------------|
| WAYNE'S BOOT SHOP -----               | \$ | 100.00         |
| WEST PARK HOSPITAL -----              | \$ | 347.67         |
| WEYERCOMM, INC. -----                 | \$ | 16,356.63      |
| WINGFOOT COMMERCIAL TIRE -----        | \$ | 632.76         |
| WILSON, PHILIP -----                  | \$ | 82.77          |
| WINSLOW, MATTHEW D. -----             | \$ | 400.00         |
| WOODWARD TRACTOR & RENTAL, INC -----  | \$ | 475.09         |
| WORLD COMMUNICATION CENTER -----      | \$ | 29.70          |
| WPCI CONSULTANTS, INC. -----          | \$ | 139.50         |
| WURZEL, PATTY -----                   | \$ | 527.58         |
| WY ESGR -----                         | \$ | 50.00          |
| Q50 NCPERS GROUP LIFE INSURANCE ----- | \$ | 988.00         |
| WYOMING DIVISION OF VICTIM SER -----  | \$ | 11,951.07      |
| WYOMING DEPT OF TRANSPORTATION -----  | \$ | 12,505.88      |
| WY. WORKERS COMP. DIV. -----          | \$ | 8,017.50       |
| WYOMING CHILD SUPPORT ENFRMNT -----   | \$ | 962.00         |
| WY. PUBLIC HEALTH ASSN. -----         | \$ | 20.00          |
| WYOMING RETIREMENT SYSTEM -----       | \$ | 53,533.57      |
| WYOMING STATE BAR -----               | \$ | 75.00          |
| WHITSON, TOM D. -----                 | \$ | 110.26         |
| YELLOWSTONE REGIONAL AIRPORT -----    | \$ | 22,789.50      |
| PAYROLL -----                         | \$ | 344,210.92     |
| EFTPS -----                           | \$ | 111,334.74     |
| VOIDS -----                           | \$ | 189.26         |
| GRAND TOTAL -----                     | \$ | \$1,475,556.08 |

Chairman Fontaine opened the discussion on the final plat review of the proposed Copperleaf Subdivision. Fontaine stated this is not a Public Hearing.

Bo Bowman, Planning Coordinator, presented a review of the Copperleaf Subdivision application. The plat includes three maps to provide property line easements, and an overview of the utility plan.

Bowman stated the Developers have transitioned to a common water system and a wastewater treatment system. Bowman stated the Plat is consistent with the Sketch Plan, a paved private road system is proposed.

Bowman stated there is one change on the final plat, Tract F that is a multi-family residential area, is not on the plat. The Developer has withdrawn that part of the Sketch Plan at this time.

Bowman stated Jim Davis, Deputy County Attorney and Frank Page, County Engineer has reviewed the final plat submittals and has determined the application is complete. Bowman stated the County has never received such a complete application and has been scrutinized in great detail by the County's Departments.

Bowman stated the applicant would not record the Final Plat until all of the infrastructure has been constructed.

Fontaine reviewed the list for approval as follows:

- Is the final plat consistent and in compliance with the Sketch Plan? Yes the requirements have been met.
- Has the applicant complied with all of the conditions for a Sketch Plan approval? Bowman is not aware of any non-compliance
- Are the lots accessible to the County Road System?  
Bowman answered yes
- Is the development compatible with the area plans?  
Bowman said yes
- Does the development comply with the County's Subdivision Regulations? Bowman said yes
- Does it comply with the County Standards and Regulations? Bowman answered yes
- Has the drainage been reviewed and in compliance?  
Bowman said yes

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- Fire Protection letter from Russ Wenke, Fire Marshall been addressed? Page created a calculation for the ponds and they far exceed any requirement for fire purposes
- Wenke indicated that Forest and Range Management is not an issue.
- Addresses and lots and blocks are in compliance
- The applicant redesigning the water and wastewater systems to meet the site soils met soil suitability.
- Department of Environmental Quality (DEQ) has approved the water and wastewater facility; State Engineer has approved the permits
- Bowman stated he did not identify any geologic hazards
- Road issues? Scott Steward, Sheriff, stated his initial concerns are on private roads, which causes problems for Law Enforcement since they have no jurisdiction on private roads for traffic control. Steward stated they go to keep the peace and have no authority to control volatile situations
- Developer has signed a Subdivision Improvements Agreement; Davis stated not all parties have signed the Subdivision Improvements Agreement yet, but will today
- The plat will not be recorded until the developer has completed all improvements.
- Certification that taxes have been paid is in the file
- Covenants have been completed

Laurence Stinson, Attorney for Copperleaf Subdivision, stated more information has been provided on this Subdivision than any other in Park County and he asked the Board to make a decision today.

Stinson stated there has been no collusion by the County with the developer; the documents have been available to the public.

Davis asked the Board if the Standard Platting condition should be on the final plat, which requires the developer to offer the roads as private rights-of-way. Davis stated it would become a public right-of-way held in trust.

French asked if the public right-of-way would give the Sheriff and Road and Bridge Department any authority over the roads. Steward stated he would be able to investigate crime, but would still have no authority to do traffic control. Stinson stated the covenants indicate that this is not an issue; our concern is if the County has the right to take them, they should maintain them. If you choose to accept the dedication of the road, then also accept the burden to maintain the road.

Davis stated the offer of dedication allows the County due process to make the roads County roads in the future. The offer of dedication is not an acceptance of the roads in the County Road System and does not place the burden on the County to maintain them.

Jeff Darragh stated they have developed subdivisions upwards toward 3000 residents and every single one had private road systems. It did not state that Law Enforcement, Fire or Emergency vehicles could not traverse on the roads. A gate upfront is a matter of privacy, not like 131 gates in front of 131 individual properties. Darragh stated he has never heard an argument that Sheriff or Police did not have access to a subdivision.

Hall stated he read the covenants and they are punitive. Bryan Skoric, County Attorney, stated covenants, as we know can go away; the responsibility of the Board is to look out for the health, safety and welfare of citizens, which includes the Copperleaf Subdivision.

Skoric stated search warrants are an area of concern. Skoric stated currently the developer is required to offer the roads for public dedication and if that were waived, the Board would not be consistent with their recent approvals. Skoric stated it would invite litigation.

Stinson stated if the language regarding private roads is removed, he wants the record to reflect that the developer does not consent to the new language that the road will be offered for a dedicated public right-of-way.

The Board agreed to the language "dedicated for a public right-of-way."

Jeremy Easum, Sage Engineering, explained the direct flow of 200 gallons (130 feet) per minutes out of the River stands alone; the exchange is not dependent on the permit from the River. Easum stated the proposed Subdivision would need 25 gallons per minute, not 200 gallons per minute. Easum stated the two wells on the site would not be used as part of the water system at this time. Stinson stated the two wells are not part of the DEQ approval.

Stinson stated the 2005 water right is independent of the exchange on the Buffalo Bill Reservoir; the developer may be pursuing backups.

Davis asked if the wells are part of the application. Easum stated they are not. The wells existed prior to the purchase of the property.

French asked could you transfer the agricultural water rights to homes on two separate water rights. Stinson stated you could transfer the water rights; there is a formula to use for that. The process is under way as we speak.

French stated the water rights were late 1800 water rights; is that enough for homes? Easum stated the water right is what DEQ has approved for the subdivision and water supply system.

Page stated he has reviewed 49 construction drawings, a notice of intent will cover the erosion control with DEQ for a storm water permit and all storm areas will be re-vegetated.

French asked if the Attorney was comfortable with the criteria for the final plat and testimony involved? Davis stated what has been presented and in the file has been reviewed and questions have been answered related to the criteria.

Hall moved to adopt Resolution #2006-16 Approval of Subdivision Permit and Final Plat for Copperleaf Subdivision on land described as portions of Sections 15, 22 and 23 of T52N, R105W, (Worthington Group of Wyoming, LLC, applicant, as presented by the Developer and reviewed by the Staff with one change on the plat removing one part as required by law. Motion carried.

\*\*\*\*\*

Marla Pierson, Elections Deputy, presented the Liquor License fees for July 25, 2006 through July 25, 2007.

Hall moved to set the Liquor License Fees at the same fee as 2005 as follows:

|                              |       |
|------------------------------|-------|
| Retail Liquor License        | \$390 |
| Limited Retail Liquor (Club) | \$390 |
| Restaurant Liquor            | \$615 |
| County Retail Malt Beverage  | \$165 |
| Microbrewery Permit          | \$390 |
| Winery Permit                | \$390 |
| Transfer Fee                 | \$100 |
| Catering Permit              | \$ 20 |

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Malt Beverage Permit

\$ 20

Motion carried.

\*\*\*\*\*

Mike Vowell, Buildings and Grounds Superintendent, presented a lease agreement with TEX-OK Energy, Limited Partnership for an additional 931 square feet of office space for seven months.

French moved to support and sign the lease with TEX-OK Energy, Limited Partnership for an additional 931 square feet of office space at \$12.00 per square foot for seven months. Motion carried.

\*\*\*\*\*

Dave Hoffert, Landfill Superintendent, opened bids for the Cody Landfill Expansion Project. Hoffert will review the bids and bring back a recommendation to the Board next week.

The bids received are as follows:

|                                      |                     |
|--------------------------------------|---------------------|
| Kobbe Construction - Powell          | \$ 97,098           |
| Heinze Fencing, Inc. - Thermopolis   | \$ 8,690 fence only |
| Harris Trucking - Cody               | \$ 94,217           |
| Nicholson Dirt Contracting - Cody    | \$ 74,807           |
| Wilson Brother Construction - Cowley | \$180,444           |

French moved to take the bids under advisement. Motion carried.

\*\*\*\*\*

Bryan Skoric, County Attorney, discussed the Memorandum of Understanding (MOU) between Park County Board of Commissioners and Elbert O. Sowerwine, III regarding an Easement Agreement to allow Tri-County Telephone access to the County's Cedar Mountain tower site.

French moved to approve the MOU between Park County and Elbert O. Sowerwine, III for an easement to allow Tri-County Telephone (TCT) access to the County's Cedar Mountain tower site.

\*\*\*\*\*

Bryan Skoric, County Attorney, presented a Personnel Action Form for Katherine Howard to fill a File Clerk position in the Park County Annex effective February 27, 2006.

French moved to approve the Personnel Action Form for Katherine Howard as presented. Motion carried.

\*\*\*\*\*

Bryan Skoric, County Attorney, requested out-of-state travel for Lori Capron and Jerri Torczon to attend Justware Computer Program training in Salt Lake City, Utah.

Hall moved to approve the out-of-state travel for Lori Capron and Jerri Torczon to attend the Justware Computer Program training in Salt Lake City, Utah. Motion carried.

\*\*\*\*\*

Frank Page, County Engineer, presented Agreements for the Purchase of Material from Antler's Ranch, Inc., Meeteetse Area; Lucky Luck Farms, Powell area, Cody Stampede, Cody area, Renner Livestock Company, LLC, Meeteetse area, R. E. Rauchfuss, Cody area, and Larsen Ranch Co., Meeteetse area to purchase gravel. Page stated the cost will be \$.65 per ton and will run through December 31, 2010.

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Hall moved to approve the six Agreements for the Purchase of Gravel from Antler's Ranch, Inc., Lucky Luck Farms, Cody Stampede, Renner Livestock Company, LLC, R. E. Rauchfuss, and Larsen Ranch Co. Page stated the cost will be \$.65 per ton and will run through December 2010. Motion carried.

\*\*\*\*\*

Chairman Fontaine opened the discussion on Scoping Notices from the U. S. Forest Service regarding Outfitter transfer corrals relocation near Pahaska and Chugwater Watershed Improvement Project near NWC Field Station.

The Board decided not to comment at this time.

\*\*\*\*\*

Chairman Fontaine opened discussion on the request a donation by the American Cancer Society's Relay for Life.

The Board agreed, it is a good cause but decided not to support charities and to send a letter informing them of their decision.

French moved to send a letter to Cindy McGimmis, American Cancer Society, denying their request for a donation for their Relay for Life. Motion carried.

\*\*\*\*\*

County Clerk Carter presented a title to a 1995 Pontiac four door sedan, serial number 1G2HX52K754290733 to be signed by the Chairman and traded in to Webster Motors, Inc.

Hall moved to assign the title for a 1995 Pontiac four door sedan, serial number 1G2HX52K754290733 and allow the Chair to sign. Motion carried.

\*\*\*\*\*

French discussed a complaint on the Spomer Gravel Pit Special Use Permit. French stated he went to the site and it was in operation on the weekend, which is in violation of the Special Use Permit.

The Board agreed to have Bo Bowman, Planning Coordinator, send a letter to Mr. Spomer advising him of the violation and the repercussions of such.

\*\*\*\*\*

Bill McCormick, Owners' Representative, discussed Change Order #10 in the amount of \$11,154.00. McCormick stated the changes are cleanup items to finish the project. McCormick stated Kloefcorn- Ballard (KB) did credit the County \$6,000 for the signage; the sign allowance was \$25,000 and the contractor spent \$19,000. McCormick stated an agreement has been reached to split the utility for the month of January.

Marion Morrison, Law Enforcement Center Construction Coordinator, reported the overnight stay is scheduled for April 14<sup>th</sup> and the Open House will be held on April 15, 2006. The dedication is set for April 25<sup>th</sup>.

French moved to approve and authorize the Chair to sign Change Order #10 in the amount of \$11,154.00. Motion carried.

\*\*\*\*\*

Chairman Fontaine opened the Public Hearing for a Special Use Permit (SUP) Plan for Idaho Creek Terraces Subdivision; property fronts on the east side of Road 2AB approximately 2

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miles from Cody. The northeast corner of the proposed subdivision is at Appaloosa Lane. Thomas E and Ann M. Flack are the applicants.

Bo Bowman, Planning Coordinator, presented the staff review. Bowman stated the SUP would allow a major subdivision in the RR-2 Zoning District. The proposed subdivision consists of 83.25 acres divided into 11 single-family residential lots. A cul-de-sac is proposed for the upper eight (8) lots and a common driveway will serve Lots 9 through 11.

Thomas Flack stated all lots will be irrigated and have buried utilities including Northwest Rural Water District.

Frank Page, County Engineer, stated he is comfortable with the access on the upper end, but the lower end is questionable due to the site grading on the hillside.

French stated it seems logical to tie the road into Appaloosa Road.

Fontaine asked for further public comments.

Rudolph Forest spoke against the Special Use Permit. The concerns were noise, odor, access, water system and impacts on water wells, and impacts on wildlife.

Frank Page, County Engineer, recommends following the County Standards, which state cul-de-sacs, should be avoided. Page stated the Board needs to look at the long term development of the County and not make the decision on the short term of today. Page stated the Board should hold the line on subdivisions and start planning.

Flack stated the wells are part of the Department of Environmental (DEQ) review; he enjoys wildlife, which is why he is keeping an area open. Flack stated a cul-de-sac is the best fit given the topography of the land.

Fontaine asked for any further comments.

There being none, French moved to close the Public Hearing. Motion carried.

French stated he does not support the upper cul-de-sac and the road should be tied to Appaloosa Lane. French stated it should be dedicated to the public similar to Copperleaf Subdivision.

Davis stated this Subdivision raises some legal questions; we have not had the chance to dig into all of the legal issues. Davis stated the Board does not need to make a decision today; you have 45 days to decide, which would give the Attorney's office time to review the information.

Hall stated he sympathizes with the applicant, but agrees with French about the cul-de-sac. Hall stated he doesn't think it should be a financial burden on the applicant for the road, but the County should pay for the balance of the road.

A decision was tabled until March 14, 2006 at 3:30 p.m.

#####

Chairman Fontaine opened the discussion on the Appeal of the staff determination that a Special Use Permit is needed for the Eggleston property for an outdoor exercise area for an existing kennel as the equivalent of an outdoor storage, assembly or display area" for a home-based business. Carl and Patricia Eggleston are the applicants.

Bo Bowman, Planning Coordinator, presented the staff review. Bowman stated he determined the applicant has exceeded

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the 1000 square foot requirement for a home-based business. Bowman stated he included the corral area as part of the home-based business, which is used as a dog exercise area. Bowman stated the area of the kennels and the exercise area is clearly over the square footage allowed.

Bowman stated the applicant is appealing because they believe the dog exercise area should not be included in the outdoor area.

Thomas Keegan, Attorney for the applicants, stated the kennels are roughly 480 square feet, which is well under the square footage if taken alone. Keegan refers to Section 3-1 in the Planning Resolution. Keegan stated repeatedly throughout the Zoning Resolution, it refers to a building not to land. Keegan stated they disagree with the decision to include the dog exercise area.

Keegan talks about accessory uses to a building. Keegan referred to 2-510(K) 1 in the Zoning Regulations; a building or use is subordinate to a principle use.

Bowman stated the Planning and Zoning Commission recommended a Special Use Permit; therefore, they thought the area was all-inclusive. Bowman stated an accessory use to a house is a garage. In a business context, a home-based business is the accessory use. Bowman stated first and foremost, this is a residential property; an accessory use is the kennel operation.

Jerry Radzay stated he opposed the kennel operations at the Planning and Zoning meeting in December. Another neighbor Mr. Chrissley also opposed the kennel operation at the Planning and Zoning meeting in December. The issues are noise, covenant issues and if approved will make the covenants ineffective. Radzay read a letter from Ken Chrissley.

Davis advised the Board comments would be more appropriate for the Public Hearing.

Janet Caudill stated most of the property is a dog run. She does not like the dog manure; the use is more than the applicants state. Caudill stated she is not convinced that the use is not a commercial use.

Melanie McGlothlin stated people in the area have an excessive amount of animals. McGlothlin questioned why this particular use came up.

French stated it seems like the exercise run is an intricate part of the operation.

Hall moved to deny the Appeal of the Planning Coordinator's decision of a Special Use Permit for the Eggleston property for an "outdoor exercise area for an existing kennel as the equivalent of an outdoor storage assembly or display area" for a home based business and the Boards determination is based on the recommendation of the Planning Coordinator and that the exercise run is an intricate part of the business. Motion carried.

\*\*\*\*\*

Public hearing for Special Use Permit to allow a kennel business as a Cottage Industry level of a home-based business. The subject property is the 2.46-acre northern portion of Lot 19 of Westridge Estates Subdivision. It fronts on the east side of Cactus Drive, approximately one-half mile north of Lane 8, approximately five miles northwest of the City of Powell. Carl and Patricia Eggleston are the applicants.

The Board agreed to take judicial notice to include the information given on the Appeal of the Planning Coordinator's determination that a Special Use Permit is needed for the Eggleston property for an "outdoor exercise area for an existing

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kennel as the equivalent of an outdoor storage assembly or display area" for a home-based business. Motion carried.

Radzay read the Chrissley letter as part of the record and gave the Board a copy. The concerns are decreased property values; violations of the covenants; too many animals, and a commercial operation.

McGlothlin expressed concern about animals specifically.

Keegan stated they are not opposed to the proposed Resolution including condition #4 requiring a landscaping plan and approved by the Planning Coordinator.

French stated the Board is premature in making a decision. The odor, noise and concerns of the neighbors should be addressed.

Carl Eggleston addressed valuation of property. Eggleston stated property sold near him last fall for more than the owner originally paid and another property sold for more than they were asking.

French moved to continue the Public Hearing on April 4, 2006 at 2:00 p.m. to take additional written or verbal comments. Motion carried.

\*\*\*\*\*

Hall moved to approve the February 8 2006 IMAC Worksession minutes. Motion carried.

Hall moved to approve the February 21, 2006 minutes as corrected. Motion carried.

Hall moved to approve the February 28, 2006 Special meeting minutes as corrected. Motion carried.

\*\*\*\*\*

Hall moved to go into executive session pursuant to W. S. 16-4-405(a) (ix) Confidential by Law. Motion carried.

Hall moved to return to regular session. Motion carried.

\*\*\*\*\*

Earnings and collections from the following County Officials were presented to the Board and approved:

|                                       |              |
|---------------------------------------|--------------|
| Scott A. Steward, Park County Sheriff |              |
| Fees for February, 2006-----          | \$ 10,254.00 |
| Joyce Boyer, Clerk of District Court  |              |
| Fees for February, 2006-----          | \$ 6,625.72  |
| Karen Carter, Park County Clerk       |              |
| Fees for February, 2006-----          | \$ 23,964.19 |

\*\*\*\*\*

The following bonds, having been approved by Bryan Skoric, County Attorney, were approved by the Board of County Commissioners:

|   |              |
|---|--------------|
| Graham Jackson, as Treasurer for West Park Hospital Board |              |
| in the amount of -----                                    | \$ 25,000.00 |
| Robert R. Parsons, as Treasurer for Park County Weed and  |              |
| Pest Control District in the amount of----                | \$ 20,000.00 |

Judy A. Braten, as Commissioner for Shoshone Project Joint Powers Board in the amount of -----\$ 5,000.00

David E. Northrup, as Commissioner for Willwood Irrigation District in the amount of -----\$ 10,000.00

Betty Carmon, as Treasurer for Park County School District #1 in the amount of -----\$ 5,000.00

Mervin Larsen, as Treasurer for Park County School District #16  
in the amount of -----\$ 10,000.00

J. Travis Smith, as Treasurer for Lake View Irrigation District  
in the amount of -----\$ 10,000.00

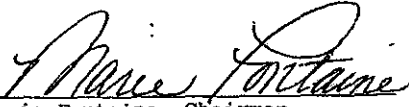
Keith Murray, as Treasurer for Shoshone Project Joint Powers Board in the amount of -----\$ 5,000.00

Thomas R. Reed, as Commissioner for Willwood Irrigation District  
in the amount of -----\$ 10,000.00

Rebecca Moncur, as Treasurer for Big Horn County School District #2 in the amount of -----\$ 25,000.00

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There being no further business to come before the Board of County Commissioners, Hall moved to adjourn until their next regular meeting to be held March 14, 2006. Motion carried.

  
Marie Fontaine, Chairman  
Park County Commissioners

  
Bucky Hall, Commissioner

  
Tim A. French, Commissioner

SEAL:  
ATTEST:

  
Karen Carter, County Clerk

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# Exhibit L



MAY 12 2006

Debra J. Wendtland  
Phone: 307.673.4696  
[deb@wendtlandlaw.com](mailto:deb@wendtlandlaw.com)

May 10, 2006

Park County Board of Commissioners  
Attn: Bryan A. Skoric  
Park County and Prosecuting Attorney  
1002 Sheridan Avenue  
Cody, WY 82414

Re: Copperleaf's Chapter 23 DEQ Submission

Dear Park County Board of Commissioners,

Shortly after the March 7, 2006 Copperleaf Final Plat hearing and the resulting March 21, 2006 Final Plat Resolution No. 2006-16, the Copperleaf Developers announced publicly that they now intend to supply water to the entire subdivision via three ground water wells. This new post-Final Plat Resolution domestic water supply plan will directly contradict and violate the Sketch Plan, the Special Use Permit ("SUP") and the Final Plat as those items were considered and authorized by Park County.

Unless the Developer intends to comply with the existing permitting,<sup>1</sup> the current Copperleaf SUP and Final Plat must be revoked and the Developers must go back to square one: Sketch Plan submittal. This is so because the Sketch Plan, the SUP and the Final Plat were obtained based on the Developer's knowing and intentional misrepresentation(s) concerning the domestic water supply for the proposed subdivision. The Developer repeatedly made distinctly different representations concerning the primary domestic water source for the subdivision to the three different governmental agencies considering the matter. Those agencies are: the Park County Board of Commissioners ("Board"), the Wyoming Department of Environmental Quality ("DEQ") and the Wyoming State Engineer's Office ("SEO").

The bottom line is that even now, the Developer still is not able to substantively and accurately demonstrate that it has, or can obtain, a reliable, safe, appropriate and truly available domestic water supply for the proposed subdivision. Just as disturbing should be the fact that by allowing the Developer to proceed this way, the Developer has effectively denied the Public, the County Planner and the Board of Commissioners, any meaningful opportunity to review and decide upon whether the proposed subdivision is

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<sup>1</sup> The Jamisons and the North Fork citizens group otherwise fully reserve and do not expressly or impliedly waive their pending appeals or other arguments that the existing County permitting for the proposed Copperleaf Subdivision is illegal and subject to reversal on appeal for other reasons by submitting this correspondence.



planned in a way that will really insure that it will have a proper legal and reliable domestic water supply.

The specific facts surrounding these events and factual representations made to each regulatory entity are as follows:

*The Misrepresentations:*

Grant of the Copperleaf Sketch Plan, SUP and Final Plat was based upon the representation that wells would **not** be used as a water source and that the wells are **not** part of the DEQ approval under their Chapter 23 permit.

*Evidence of the Misrepresentation:*

- a. Dec. 7, 04 Developer tells the county they won't use wells, but will use the river.<sup>2</sup>
- b. Jan. 25, 05 Park County Planner admits that system using river water is "elemental" to the Sketch Plan and the Planner acknowledges that a centralized substantially changed, the Sketch Plan will need to be amended.<sup>3</sup>
- c. Mar. 28, 05 Developer represents to the DEQ that the "[s]ource water for the system will be the North Fork of the Shoshone River." A copy of the first Ch 23 application to DEQ is marked as "Attachment 3" see unnumbered pp 1 and 4. (This application is later withdrawn by the Developer on May 26, 2005).
- d. April 20, 05 Developer admits to and represents the SEO, in an exchange petition, that well water (ground water from the subdivision) is "insufficient" to serve as the source of domestic water supply.<sup>4</sup>
- e. April 20, 05 Developer admits to the SEO, in the same exchange petition, that a surface water right with only a 2005 priority in the river is

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<sup>2</sup> "Use of river water for a central treated water system addresses several issues. There is a reliable adequate supply. There will be no affect to the aquifer and therefore have no impact on adjacent property owner's wells." A copy of the Developer's December 7, 2004 letter is marked as "Attachment 1" see unnumbered p. 3, first paragraph.

<sup>3</sup> See Park County Planning & Zoning Memorandum, dated January 25, 2005 at p.2 ¶ II.A.

<sup>4</sup> "That due to the need for a reliable, year-round domestic supply of water for the residents of the Copperleaf Subdivision; the presence of many existing wells in the area around Copperleaf Subdivision; and the proven insufficient supply of ground water in the area, your petitioner believes this proposed exchange is the most cost effective means to provide the needed water supply". A copy of the Developer's Petition for Exchange is marked as "Attachment 4" see p. 2 ¶ 7. (Emphasis added).

not dependable or sufficient to actually meet the needs of subdivision residents year round.<sup>5</sup>

- f. April 20, 05 Developer expressly admits to the SEO it must have the proposed exchange (purchase of Buffalo Bill Reservoir Water) in order to support 2005 priority in the river.<sup>6</sup>
- g. April 20, 05 Developer agrees before the SEO to do the exchange of water that developer proposed.<sup>7</sup>
- h. May 24, 05 DEQ Geologist, John Passehl, reviewed Developers Mar. 28, 05 filing and concluded that the "proposed water supply for the entire subdivision is an infiltration gallery located adjacent to the North Fork of the Shoshone River." A copy of Mr. Passehl's report is marked as "Attachment 5" see p. 3 ¶ 13.
- i. May 26, 05 Developer pulls its first DEQ Chapter 23 Subdivision Application just days before the DEQ reports back to the County, presumably because it knows that it will get an adverse decision from the DEQ. Developer then pushes the Board to make a decision on the SUP without DEQ Chapter 23 review.
- j. June 21, 05 The Board grants Developer a Special Use Permit ("SUP"). The Board finds that Developer will use only water from the river. See SUP Resolution No. 2005-40 p. 2. ¶4, p. 3 last paragraph.
- k. July 28, 05 The SEO rules on Developer's request to purchase Buffalo Bill water to exchange for water in the river and determines that "the purpose of this exchange is to be able to provide a reliable, year-round domestic water supply for the residents of the Copperleaf Subdivision." A copy of the Order Granting An Exchange is marked as "Attachment 6" see p. 2 ¶4.

That the exchange is authorized to support the diversion of an equivalent amount from the North Fork River. Id at p. 2 ¶3. Developers'

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<sup>5</sup> That there is "not sufficient water available to provide a fully supply of water for the year round uses" of the subdivision based on a 2005 ability to take surface water, from the North Fork of the Shoshone River. Id at p. 1 ¶ 6.

<sup>6</sup> "That your petitioner desire to make an exchange of water . . . from water stored in the State Water Account in the Enlargement Buffalo Bill (Shoshone) Reservoir, Permit NO. 9553RES, . . . thereby better utilizing and conserving the waters of the State of Wyoming and serving the citizens in the Copperleaf Subdivision and surrounding community." Id at pp 1 and 2 ¶6.

<sup>7</sup> "That your petitioner hereby agrees to such exchange under the conditions set out in this petition and the conditions imposed by Order of the State Engineer granting this petition." Id at p. 2 ¶ 8.

new 2005 direct flow water right is expressly tied to the exchange on the permit application papers and on the permit papers themselves. Id.

- l. Aug. 25, 05 Robert and Michelle Keith appeal the entry of the SEO Exchange Order to the District Court. Keith's argue convincingly that the Exchange Order is illegal on its face because the order does not comply with the exchange statutes, SEO regulations or controlling cases law. A copy of the Keith's Brief is marked as "Attachment 7".
- m. Sept. 1 05 Developer tells the DEQ, in its second Chapter 23 Subdivision Application, that it will not complete the exchange.<sup>8</sup> Meanwhile, the Developer continues to actively litigate with the Keith's about whether the exchange is legal.
- n. Jan. 6, 06 Copperleaf Final Plat Application expressly states that the sole source of domestic water supply for the subdivision will be surface water diverted from the river under the 2005 permit. Developer makes no mention of wells, groundwater supply and does not even plots any groundwater wells on the maps submitted to the county.<sup>9</sup> The county and the public rely upon this presentation.
- o. Mar. 7, 06 Public Hearing on Final Plat: [Copperleaf Engineer] "Easum stated the two wells on the site would not be used as part of the water system at this time. [Corporate Attorney] Stinson stated the two wells are not part of the DEQ approval. . . . Davis asked if the wells are part of the application. Easum stated they are not. The wells existed prior to the purchase of the property." Accurate Minutes of Final Plat Hearing, held on March 7, 2006, recorded in the *Cody Enterprise - Monday, March 27, 2006, at p. B-4.*
- p. Mar. 14, 06 The Board grants the Final Plat and specifically finds that: ~~"the water system as reviewed herein is dependent solely on the May 2005 water permit and that the Board is not in its review considering the availability of domestic water from any wells . . ."~~ Board Resolution No. 2006-16 p. 3 ¶ 3.

<sup>8</sup> "The developer is proposing to utilize this appropriation without the benefit of an exchange from the Buffalo Bill Reservoir to serve the Copperleaf Subdivision." Copperleaf 2<sup>nd</sup> Chapter 23 Subdivision Application, dated Sept. 1, 2005, at unnumbered p. 4 first paragraph. A copy of the application is marked as "Attachment 8".

<sup>9</sup> "1. The Copperleaf Subdivision Ponds Nos. 1-4 Reservoirs, Permit Nos. 12202REW - 12205RES, are filled through the Enlarged North Fork Valley Ditch, Permit No. 7436ENL and the Copperleaf Subdivision Pipeline, Permit No. 33288.  
2. The Copperleaf Subdivision Pipeline, Permit No. 33288, also provides for use of water from the North Fork Shoshone River for domestic supply within said Subdivision." Final Plat: Water Right Distribution Plan For the Copperleaf Subdivision, dated January 6, 2006.

- q. Ap. 19, 06 Developer's Engineer, Easum, testifies under oath before the Board of Control that the Developer will never seek to convert existing surface irrigation rights on the subdivision property to domestic supply under any circumstances. The Developer's attorney, Mr. Stinson, stipulates to this position on the record as well. Mr. Easum also testifies that when the Final Plat was presented to the county, the Developer did not disclose that it was planning to rely solely on groundwater as the sole domestic water supply for the subdivision. Mr. Easum also acknowledged the wells on the property were not the method that the Developer was proposing to use for a domestic supply of water.<sup>10</sup>

*Real Plan for water source that was not disclosed:*

As it turns out, at some point as early as September of 2005, Developer began to tell the SEO a different story than it was telling either the DEQ or the Board. Ultimately, the Developer obtained both its SUP and Final Plat Approval on the express premise that water from the North Fork River, based upon an exchange of water purchased from Buffalo Bill Reservoir, would be the sole source for domestic water. However, only after it had obtained both its SUP and Final Plat Approval did the Developer reveal its true plan: which is to use well water as its sole source of domestic supply.

*Evidence of wells as actual water source:*

- a. Sept. 19, 05: Developer tells the SEO that well water will supplement surface water. "This well is proposed as an additional source of potable water for Copperleaf Subdivision . . ." A copy of the Developer's Application For Permit To Appropriate Ground Water for Copperleaf No. 1 Well, is marked as "Attachment 9" see p.2 ¶ 12.
- b. Sept. 19, 05: Developer submits an application for permit of Copperleaf No. 2 Well which will be "commingled with the Copperleaf No. 1 Well . . . as an additional source of potable water for the Copperleaf Subdivision . . ." A copy of the Developer's Application For Permit To Appropriate Ground Water for Copperleaf No. 2 Well, marked as "Attachment 10" see p. 2 ¶12.
- c. Nov. 4, 05 The SEO permits both Wells Nos. 1 and 2, but limits them to a 2005 priority that will be regulated along with the North Fork Shoshone River.<sup>11</sup>

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<sup>10</sup> A transcript of this testimony has been requested and will be provided as soon as it is available in official form.

<sup>11</sup> "As such, any required regulation of water rights of North Fork Shoshone River and its tributaries in the future shall consider this permit under the priority date shown, together with all other rights to use water from North Fork Shone (sic) River and its tributaries." See Attachments 9 and 10 at p. 2 Bottom of each page and p. 3.

- d. ~~Mar 3, 06~~ Developer submits an application for permit of Copperleaf No. 3 Well which will be "commingled with the Copperleaf Wells Nos. 1 and 2." A copy of the application is marked as "Attachment 11" see p. 2 ¶ 12. Like Well Nos. 1 and 2, 3 will also be for "[p]otable<sup>12</sup> water for lots within Copperleaf Subdivision, Park County, Wyoming." *Id* at p. 1 ¶4.
- e. ~~Mar 7, 06~~ Curiously, Developer represents to the Board, during the Copperleaf Final Plat Hearing, that no wells will be used to supply the Copperleaf Subdivision with domestic water. See Minutes of Final Plat Hearing, held on March 7, 2006, as recorded in the *Cody Enterprise on Monday, March 27, 2006 at p. B-4*.
- f. April 26, 06 Developer's Chapter 3 Permit Application is received by the DEQ. Developer lists the sole PWS (public domestic water supply) as: ~~"Three Wells~~, treatment, storage and pumping." A copy of the application is marked as "Attachment 12" see p. 1, middle of page. Under the heading: Briefly describe facilities proposed to be constructed the Application states: "Under this project a new public water system will be installed. Three wells (including transmission lines) will supply groundwater to a treatment plant and storage tanks to serve the Copperleaf Subdivision in Park County, Wyoming." *Id* at p. 2.
- g. April 2006 Pursuant to the Copperleaf Water Supply & Design Treatment Report ("Report") within the Chapter 3 Application, under the heading "INTRODUCTION" the Developer states: The water source proposed consists of three wells located on Copperleaf property within the open space." A copy of the report is marked as "Attachment 13" see unnumbered page 1. Please note that the Developer makes absolutely no mention of wells supplementing surface water.
- h. April 2006 In the Report, under the heading: "Source of Water Supply", developer states: "Source water comes from three wells located within the copperleaf Subdivision common area." *Id* at unnumbered page 5.
- i. April 2006 In the Report, under the heading: "Description Of Surface Water Source" Developer speaks only of ground water: well water. "The developer has obtained permits for three wells in the locations shown on the plans." *Id*. This section also clearly states that three new wells will be drilled and that existing wells will not be used to supply the subdivision.

***What difference does it make?***

As reported recently in the newspapers, Developer's response appears to be that the change from surface water to supplied ground water makes no difference to the planning process because the water all comes from the river somehow anyway.

<sup>12</sup> Black's Law Dictionary defines "potable" as: "suitable for drinking".

Therefore, the fact that it has a Fall 2005 priority to take surface water from the North Fork River is no different than using a Fall 2005 well permit for wells that draw from the North Fork River. This assumption by the Developer is incorrect.

The problem with the Developer's approach to how one goes about permitting and developing a subdivision is three fold:

*First and foremost it is illegal.* Developer's latest change is completely contrary to all representations made to the Board, prior to grant of either the SUP or the Final Plat, and upon which the Board specifically relied in the grant of each. The Public and the Court have now been totally deprived of any timely and meaningful opportunity under the Park County zoning procedures to review and comment upon any proposal to supply domestic water to the subdivision via groundwater. This problem can only be remedied with new hearings on the Developer's current plan to supply domestic water to the proposed subdivision. ↙

*Second, there is harm.* Based upon which type of water source a developer proposes will determine the type of DEQ Chapter 23 review that is required. In granting the SUP, the Board specifically relied upon the DEQ Chapter 23 review which in turn relied upon a claim by the SEO that the developers would be using a 2005 priority surface water permit diverting from the North Fork River (Permit No. 33288), backed up by an exchange of stored water from the Buffalo Bill Reservoir. As a direct consequence DEQ conducted no geologic or hydrologic review as part of the second Chapter 23 review upon which the SUP was granted.

Without the DEQ's geologic and hydrologic review of the Chapter 23 Application for the current water supply plan, no complete data has been requested or provided to support the Developer's after the fact allegation that the wells will simply drain from the river. The Developer does provide a cursory report from Professional Geologist: Tom Pilch, but the report is scant and incomplete.<sup>13</sup> Significant questions remain regarding the allegation of interconnectedness in the Pilch Report, as well as regarding volumes of available groundwater, aquifer characteristics and groundwater quality in the area. There may be some direct communication between the river and some parts of the alluvial aquifer or there may not; however, the proposed wells will not be completed in the alluvial aquifer. Based upon the best representations of the Developer, the wells will be completed into the terrace aquifer. This appears to be a totally separate aquifer that is recharged from upland areas and tributaries of the river.

*Third, assuming hypothetically only, that the wells and the river are connected, a Fall 2005 well permit is no more dependable than a 2005 surface water permit from the North Fork of the Shoshone River.* The Developer admitted that, standing alone, a 2005 surface water permit from the North Fork of the Shoshone River is not a dependable source of water. Recall that the Developers admitted to the SEO, back in April of 2005, that there is "not sufficient water available to provide a full supply of water for the year

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<sup>13</sup> A complete analysis of the Pilch Report and Chapter 3 Application to DEQ will be provided by Licensed Wyoming Professional Geologist Gretchen Hurley.

round uses” of the subdivision based on a 2005 ability to take surface water, from the North Fork of the Shoshone River. Attachment 4 at p. 1 ¶ 6. The Developer’s Engineer and Attorney have both sworn and stipulated that the Developer will never seek to convert its other existing irrigation surface water rights to a domestic supply. The Developer should have to live with its own prior and unqualified representations in that regard.

Based upon the Developers preliminary agreement with the Wyoming Water Development Commission to purchase water from the Buffalo Bill Reservoir, the SEO granted the surface water permit (Permit No. 33288) to allow developer’s to take the necessary water for the subdivision from the North Fork River with a 2005 priority. Specifically the Developer agreed: “That your petitioner hereby agrees to such exchange under the conditions set out in this petition and the conditions imposed by Order of the State Engineer granting this petition.” *Id* at p. 2 ¶ 8.

The Board specifically relied upon the representation by the Developer that it would complete the exchange with Buffalo Bill and divert water from the river for its subdivision water supply. The Final Plat Resolution states:

. . . Developer has provided information in the file that, after checking with the State Engineer, there has been no recorded regulation or “call” on the water rights on the Northfork of the Shoshone River, however, opponents to this subdivision have submitted pleadings from a separate proceeding indicating that in 1977 there was a “call” on the Northfork of the Shoshone River during a dry year, however, the Board herein takes notice that in 1993 the Bureau of Reclamation completed a project on the Buffalo Bill Dan and Reservoir which has allowed for significantly more water storage in Buffalo Bill Reservoir than existed in 1977 and that such additional storage creates significantly different and more favorable circumstances relating to satisfaction of water rights than existed in 1977, including the availability of water in a State of Wyoming storage account available for purchase and/or exchange; . . . and that even so the Board has reviewed the information presented itself, and finds that, ~~the water system as reviewed herein is dependent solely on the May 2005 water permit and that the board is not in its review considering the availability of domestic water from any wells located on the subject property or from irrigation rights or other source, . . . .”~~

(Emphasis added) Final Plat, dated March 14, 2006, p.3. ¶3. Despite the fact that the Northfork Group provided such information to the Board, on March 7, 2006, the Board apparently did not realize that prior to receipt of the Final Plat Application, the Developer had told the DEQ that it would not use the exchange water. As stated in the Developer’s application to the DEQ: “The developer is proposing to utilize this appropriation **without the benefit of an exchange** from the Buffalo Bill Reservoir to serve the Copperleaf Subdivision.” Attachment 8, at unnumbered p. 4, first paragraph. The very exchange that made a 2005 surface water permit in the North Fork of the Shoshone dependable, had

now been dropped by the Developers. This clearly rendered the Developer's reliance upon a 2005 permit in the river just as insufficient as it was in April of 2005 in its admission to the SEO via the exchange petition.

So far, the SEO has told Developers that the wells will be regulated, just as the river is in dry years, based upon a 2005 priority. "As such, any required regulation of water rights of North Fork Shoshone River and its tributaries in the future shall consider this permit under the priority date shown, together with all other rights to use water from North Fork Shone (sic) River and its tributaries." See Attachments 9, 10 and 11, pp. 2 and 3 of each. The county was also shown conclusively that the Developer's prior representations to several agencies that the North Fork of the Shoshone River had never been regulated above the Buffalo Bill Reservoir were patently false. The North Fork of the Shoshone was regulated as recently as 1977 and the direct flow rights can be "called" through the reservoir or otherwise again. Therefore, in water short years, the wells may be shut off first because of their 2005 priority date.

***Conclusion.***

The fact that Developer has changed its source of water is not new. By my count this is their fifth water supply change since they submitted their Sketch Plan. The sequence of plans has been: (1) individual on-lot wells, (2) convert irrigation water, (3) divert water from the North Fork of the Shoshone River, (4) purchase exchange water supply from Buffalo Bill Reservoir, and (5) propose 3 new public water supply wells. The problem is that this latest change comes only *after* the Board has granted the Developer its approved SUP and Final Plat. Developer allegations that such a substantive change at this stage in the process is not harmful ignores both their own admissions and the law.

Developers must not be allowed to profit from an approach to subdivision planning. You would set a terrible precedent if you allow their proposed subdivision to proceed under these circumstances. The Developer must be required to disclose its final domestic water supply plan at the Sketch Plan level and then go through the entire process one time in a fair way so that the County and the Public actually substantially analyze the merits of what the Developer is really proposing.

Sincerely,

WENDTLAND & WENDTLAND, LLP

  
Debra J. Wendtland

DJW/lrm

Enclosures

cc: Lawrence Stinson, Jeff Hermansky, John Wagner,  
Don MacKinzie, Patrick T. Tyrrell