



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
September 1, 2006

Angela Schaer Kaufmann
Moffatt Thomas Barrett Rock & Fields, Chtd.
101 S. Capitol Blvd 10th Fl
Boise, Idaho 83701 0829

Re: Snake River View Estates – Public Drinking Water System

Dear Ms. Kaufmann,

The Idaho Department of Environmental Quality (Department) is in receipt of your letter dated August 22, 2006, relating to the Snake River View Estates' (SRVE) drinking water system. In your letter, you question whether the Department has the authority to require SRVE to provide certain documentation to the Department as part of the Department's review and approval of the water system. Specifically, you question the Department's request for certain materials by letter dated March 3, 2006. I will address each of these items in turn.

1. "Documentation of the transfer of ownership of water rights for both culinary and irrigation waters to the Homeowners Association"

The Idaho Rules for Public Drinking Water Systems (Rules), IDAPA 58.01.08, provide the Department authority to require the submission of certain information necessary to determine whether a drinking water system's source is consistent and adequate. 549.01(b). Additionally, the Rules require, as part of the Engineering Report, the submission of information relating to the design data for domestic and irrigation uses as well as the adequacy, quality and availability of water. 551.01(c) and (g). When a "water system is to be served by a separate non-potable irrigation system, it must provide documentation of legal water rights sufficient to ensure that the irrigation system will not compete with or in any way diminish the source of water for the potable water system." 551.01(g).

In the present case, in order for the Department to determine whether the proposed drinking water source is adequate and will not compete with or be diminished in any way by the irrigation system, information relating to the available water rights and proposed irrigation system is necessary. It is not the Department's intent to enforce the Idaho Department of Water Resources' rules relating to irrigation practices, but rather to make certain that the source of drinking water is adequate and consistent so as to ensure the protection of public health.

It was the Department's understanding that your client, Earl Mecham, intended to transfer ownership of certain water rights to the Homeowners Association. If this presumption is incorrect, please inform the Department.

2. Information regarding irrigation operations and policies and adequacy of the mechanical system and surface water rights

As stated previously, the Rules require that information relating to irrigation data and practices be submitted to the Department in order for the Department to ensure that the system's drinking water source is adequate and consistent and that the source will not compete or be diminished by irrigation uses. IDAPA 58.01.08.549.01 and 551. It is not the Department's intent to regulate the irrigation uses, only to ensure that the drinking water source is adequate and protective of public health. To that end, the Department is particularly interested in any irrigation practices SRVE will use when surface irrigation water is not available. Again, the Department is interested in this information only to ensure that drinking water uses will not compete with irrigation uses.

3. Question regarding adequacy of groundwater right

In the documentation submitted by SRVE to the Department, SRVE indicated that its drinking water source consists of a groundwater right of 0.34 cfs. Information provided, as part of the engineering report submitted by SRVE, used the 0.34 cfs quantity in determining that the proposed water supply is adequate in regards to the proposed development. It has come to the Department's attention that SRVE's groundwater right may no longer be 0.34 cfs but some diminished quantity. See enclosure. Please have your client provide information to the Department addressing this issue, specifically documentation evidencing that the drinking water supply remains adequate and consistent.

If you have any questions in regards to this letter, please do not hesitate to contact me. Any further engineering correspondence should be addressed to Charles Ketterman at the Department's Pocatello Regional Office, 444 Hospital Way #300, Pocatello, Idaho 83201. Thank you for your attention to this matter.

Sincerely,



Stephanie Ebright
Deputy Attorney General

STE/bak

Enclosures

cc: Toni Hardesty
Barry Burnell
Charles Ketterman
Justin Beard
Don Lee
Dennis Dunn, Idaho Department of Water Resources
Gary Spackman, Idaho Department of Water Resources



State of Idaho

DEPARTMENT OF WATER RESOURCES

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EASTERN REGION

FILE COPY

JAMES E. RISCII
GovernorKARL J. DREHER
Director

20 June 2006

Mr. Earl Mecham,
Snake River View Estates, LLC
PO Box 641
Soda Springs, Idaho 83276

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SEP 05 2006

DEPARTMENT OF
WATER RESOURCES

RE: Water Right Permit 35-9085

Dear Mr. Mecham,

There are several issues regarding Water Right Permit 35-9085 that may not be understood.

Only that portion of Snake River View Estates that was complete on December 1, 2005 can be considered in the reinstatement of permit 35-9085 and the field exam to determine the extent of Water Right 35-9085. Development after December 1, 2005 must be covered by a new Water Right application for Permit. This application will be processed by the department and advertised in the local paper for public notification before it can be approved by the Department.

Please provide the Department with documentation of the extent of the development on December 1, 2005.

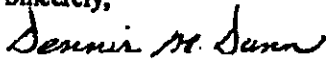
When the original application for permit was made, the amount of water applied for was 0.34 cfs (157 gpm) for in home use. The application by Snake River View Estates, LLC did not include irrigation. The total rate that Snake River View Estates may divert is 0.34 cfs at any time unless it is to fight fire. Snake River Estates, LLC indicated that they owned canal shares and all irrigation of the individual lots and common areas would be through the canal. Condition 3 of the permit requires the full use of all canal shares before the wells may be used to irrigate one half acre around each home. If the canal shares are not fully used by the homeowners association or any homeowner, or are sold, then the well water may not be used for any irrigation around the homes within the subdivision or the individual's home. The irrigation season is from April 1 to October 31.

Condition 6 of the permit states that the wells may not be used to irrigate any common areas or lots on which homes have not been built. This condition precludes the watering of the berms and trees along the highway or within the subdivision from the wells. The expectation is that these areas will be continued to be irrigated from the surface water source.

In summary Snake River View Estates, LLC may only divert 0.34 cfs regardless of the capacity of the wells. Irrigation of any berms, common areas and the trees planted on them from the wells is not permitted. All surface water irrigation shares must be fully exploited before the irrigation of one half acre around each home may take place. A new application for permit is required for all development after December 1, 2006.

If you have any questions please contact me.

Sincerely,



Dennis M. Dunn
Sr. Water Resource Agent, IDWR

Cc: Angela Schaefer Atty.
Roger Warner IDWR
Jared Bragg P.E.
John Lindsay HOA
Chuck Ketterman DEQ

Enc: Water Right Permit 35-9085

Moffatt Thomas

MOFFATT THOMAS BARRETT ROCK & FIELDS, CHTD.

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Robert E. Bakes, *of counsel*
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Willis C. Moffatt, 1907-1980
Kirk R. Helvie, 1956-2003

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Department of Environmental Quality
State Water Quality Programs

August 22, 2006

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AUG 23 2006

Department of Environmental Quality
State Water Quality Programs

Justin Beard, E.I.T.
Staff Engineer
Department of Environmental Quality
444 Hospital Way, Suite 300
Pocatello, ID 83201

Charles R. Ketterman, P.E.
Water Quality Engineer
Department of Environmental Quality
444 Hospital Way, Suite 300
Pocatello, ID 83201

Re: Snake River View Estates - Division 3 - Water System
MTBR&F File No. 22-813.1

Gentlemen:

I represent the Snake River View Estates, LLC owned by Earl Mecham. He has asked me to address certain matters set forth in your correspondence dated March 3, 2006 and May 15, 2006.

Specifically, the document purports to require that certain tasks be accomplished regarding the irrigation system for the subdivision. It requires not only an operation and maintenance manual, which includes irrigation system, but requires "documentation of the transfer of ownership of water rights for both the culinary and irrigation waters to the Homeowners Association." Setting aside the issue of the culinary water, please provide me with the authority that requires the Department of Environmental Quality to transfer ownership of irrigation water rights. To the best of my knowledge, those issues are within the purview of the Idaho Department of Water Resources, not the Department of Environmental Quality.

Similarly, Item 4.c. contained on page 2 of your March 3, 2006 correspondence requires several items regarding the irrigation operations and policies. Again, I am unaware of any statutory or regulatory authority that allows DEQ to regulate irrigation uses. Relatedly, Item 4.c. provides that "It does not appear that your consultant has designed the wells to accommodate irrigation demand when water from the canal is unavailable." Please provide me with the source of your

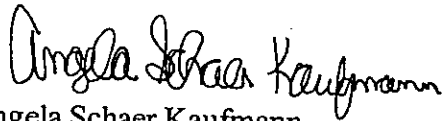
Justin Beard, E.I.T.
Charles R. Ketterman, P.E.
August 22, 2006
Page 2

justification for that conclusion. The water system was designed by an irrigation system supply company and reviewed by the engineers. Therefore, we are confident that the system, to the extent within the purview of DEQ, will be adequate.

Finally, in your May 15, 2006, correspondence to Bingham County, you assert that "[t]o the best of our knowledge, the developer has not provided an adequate mechanical system or the water rights from a surface source to the homeowners to satisfy the projects' irrigation needs." Please identify the source of your knowledge, and provide the facts and data underlying your conclusion. In addition, please provide the legal authority giving DEQ jurisdiction over irrigation water rights.

I look forward to your response to this correspondence. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Angela Schaer Kaufmann

ASK/jrj

cc: Earl Mecham
Toni Hardesty
John Kirkpatrick, P.E. - DEQ - PRO
Jared Bragg, P.E. - Harper-Leavitt Engineering - Blackfoot
David Babbitt - Public Works Director - Bingham County - Blackfoot
Allen Jensen - Bingham County Planning & Zoning - Blackfoot
Steve Pew - PHD6 - Pocatello
Bonnie Christensen - PHD6 - Blackfoot
John Lindsay - Pres. of Homeowners Assoc. - Snake River View Estates
Barry Burnell