

Keen, Shelley

From: Keen, Shelley
Sent: Tuesday, November 21, 2006 3:03 PM
To: 'Charles G. Brockway'
Subject: RE: Permit 37-21243 Waterford Partners

Chuck,

Interesting scenario. I'll take a look at it. Could you scan and email me the agreement so I can see the actual language?

Shelley Keen
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4947
shelley.keen@idwr.idaho.gov

-----Original Message-----

From: Charles G. Brockway [mailto:charles.g.brockway@brockwayeng.com]
Sent: Tuesday, November 21, 2006 2:55 PM
To: Keen, Shelley
Subject: Permit 37-21243 Waterford Partners

Hello Shelley,

I've got an interesting problem with a client relative to a water permit.

Permit 37-21243 is a municipal permit for a subdivision in Carey, approved in May 2004. It was for in-house usage only, no irrigation of any kind, not even the 0.5 acre per lot domestic. All irrigation is to be supplied by a separate system with surface water. As such, my recollection is that IDWR determined that the permit was essentially non-consumptive and therefore no mitigation plan or participation in an organized group was required.

The subdivision has now gone through the City of Carey process, in the course of which the developer entered into a development agreement with the City. One of the unfortunate provisions of the agreement is that the developer is to create a groundwater mitigation plan, submit it to IDWR, and obtain approval from IDWR. In other words, they entered into an agreement that was contrary to the determination of the Department.

Bottom line question: can the Department write a letter stating that 1) no mitigation plan was required or is currently required under IDWR policy; and 2) the Department would not review or at least would not be able to "approve" a mitigation plan that was not required for the permit.

Thanks, Shelley.

Chuck

Charles G. Brockway, Ph.D., P.E.
Brockway Engineering, PLLC
2016 Washington Street North, Suite 4
Twin Falls, Idaho 83301

11/21/2006

(208) 736-8543
charles.g.brockway@brockwayeng.com

11/21/2006

Development Plan and shall irrigate the Property only with the water rights set forth in attached Exhibit D. No water from the District shall be used for irrigation purposes. In the event Carey or the Little Wood Irrigation District constructs a public irrigation system, Waterford shall, upon ninety (90) days written notice from the City, connect to such public irrigation system in accordance with the ordinances, rules and regulations then in effect at no cost to Carey or the District provided that said public system is available through a connection within 1000 feet of the Property.

(D) Groundwater Mitigation Plan. Prior to Final PUD Subdivision Plat approval by Carey, Waterford shall submit and receive approval of a Groundwater Mitigation Plan for the Project (GMP") by the Idaho Department of Water Resources ("IDWR") and any other required governmental agency, and implement the GMP. The GMP shall include all of the Water Rights except as otherwise agreed to by Carey and Waterford in writing. The purpose of the GMP is to (i) mitigate depletion of groundwater by the Project, (ii) provide irrigation water at times when the surface Water Rights are not available to the Project in lieu of Waterford having to acquire supplement water rights and (iii) for any water remaining under the GMP after the preceding purpose (ii) for use by Carey to provide groundwater mitigation to Carey in order for the City, or its assigns, to draw addition ground water for municipal irrigation purposes. All ground water mitigation from the Water Rights under the GMP shall be dedicated in perpetuity for said groundwater mitigation purposes. None of the Water Rights shall be transferred or conveyed from the Property or removed from the GMP without the prior written consent of Carey. The GMP application shall be submitted in the name of Waterford for the joint benefit of Waterford and Carey. The GMP plan and application shall be approved by Carey prior to filing by Waterford with IDWR. All costs and expenses incurred with regard to the study, preparation, filing, review and implementation of the GMP shall be paid for by Waterford.

8. Homeowners Association, CC&Rs and Endowment. Waterford shall record a Declaration of Covenants, Conditions and Restrictions ("Declarations") consistent with the terms, provisions and obligations set forth in the PUD Development Plan and this Agreement. The Declarations shall provide for the establishment of an Association endowment fund to be used solely for the maintenance, repair and replacement of the Park, open spaces, sidewalk and other common areas which shall be funded by a transfer assessment of one quarter of one per cent (.025%) on the gross sales price of each Lot, unimproved or improved, within the Waterford PUD Subdivision. This endowment assessment shall be paid by the seller of such Lot to the Association at the time of each sale of such Lot. Also, without limitation, the Declarations shall set forth the terms, provisions and obligations set forth in paragraphs 4, 5, 6, 7, 8 10 and 11 of this Agreement and which shall not be amended without the prior written approval of Carey. Prior to Final PUD Subdivision Plat approval by Carey, Carey shall review and approve the CC&Rs to be recorded by Waterford.

9. Community Housing and Buyer Assistance Programs. Waterford shall offer and maintain the Equity Builder Purchase Assistance Program set forth on attached Exhibit E, and the Carey Volunteer Fireman Bonus Program as set forth on attached Exhibit F. At the time of recordation of the Final PUD