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Mr. Greg Lanning
Wyoming State Engineer
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VIA EMAIL: greg.lanning@wyo.gov

Mr. Todd Parfitt
Director
Wyoming Department of Environmental Quality
200 West 17th Street
Cheyenne, WY 82002

VIA EMAIL: todd.parfitt@wyo.gov

Subject: Objection to permit and request for cancellation of permits numbers U.W. 207285 and U.W. 205989, pursuant to W. S. §41-3-937.

Dear Mr. Lanning and Mr. Parfitt:

The University of Wyoming hereby requests the State Engineer Office (“SEO”) cancel Permit numbers U.W. 207285 and U.W. 205989. These permits were granted based upon faulty or fraudulent information supplied by the City of Laramie (“City”) and must be cancelled. The SEO should notify Laramie of the fatal problems with the permits and set a hearing on Permits U.W. 207285 and U.W. 205989 as soon as possible and prior to the City drilling a well pursuant to these permits.

The City’s attempt to use the original 41T3 well bore, which never produced water and where the permit was cancelled in 1977, to drill a new well in the Casper aquifer must be rejected. The two subsequent permits, U.W. 207285 (monitor well) and U.W. 205989 (Casper Aquifer production well), have no relation to the original 41T3 well bore. Those permits which failed to comply with Wyoming law and which are dramatically inconsistent with each other

and the original 41T3 permit must be cancelled. If the city desires to drill an 800 foot well in a city street they need to obtain a new permit.¹

The above permits should be cancelled as they violate the act establishing water rights, administration, and control of underground water in Wyoming. W.S. § 41-3-901, et seq. The City of Laramie was without legal authority to “refile” a cancelled and abandoned permit or statement of claim from 1977. There is no such provision in the law to allow such an action. The City does not own the land, has no access agreement, has no proof of ownership, and lacks the legal authority to create an existing ownership in a permit cancelled approximately forty years prior.

The SEO has the statutory authority to cancel or suspend the above permits granted to the City of Laramie. The relevant statutory provision is as follows:

Cancellation or suspension of permits or certificates: Whenever, after notice to and opportunity to be heard, the state engineer finds that the holder of any permit is willfully violating or has willfully violated any provision of such permit or any provision of this act or of any order issued pursuant to this act, the state engineer may cancel or suspend such permit or impose conditions on the future use thereof to prevent such violation, pursuant to W.S. 41-3-616(c). Whenever, after notice to and opportunity to be heard, the board of control finds that the holder of any certificate of registration or certificate of appropriation is willfully violating or has willfully violated any provision of such certificate or any provision of this act or of any order issued pursuant to this act, the board of control may cancel or suspend such certificate or impose conditions on the future use thereof to prevent such violation, pursuant to W.S. W.S. 41-3-616(d).

W.S. § 41-3-937.

Here, the City has made several fatal mistakes. They attempted to turn a cancelled well permit into a monitor well. Then they attempted to change that monitor well permit into a production well permit that allowed the City to drill 246.2 feet deep. Now, they are attempting to request permission from DEQ to drill a well to a total depth of over 800’ deep, at a new location. All of these actions were taken without either consent of the landowner or an access agreement on lands they do not own and without following the provisions of groundwater law in Wyoming.

History of Permits and Process

The City obtained a permit to drill the 41T3 well (Properly called the Turner No. 3 Well) via Statement of Claim-U.W. No. 158. The well was “completed” on March 10, 1942.

¹ UW has no objection to the City of Laramie drilling as many wells as they deem necessary. UW does object to the City’s frantic and desperate act to drill a well under a totally flawed and voided permit in the middle of a city street only to try and gain priority over UW’s lawfully permitted wells. The city should apply for a proper permit and drill a well on land that they own and in compliance with Wyoming law.

The well sat dormant and unused by the City. On June 14, 1977, Banner Consultants, Inc. on behalf of the City, requested that the Statement of Claim for Turner No. 3 be cancelled. On August 24, 1977, the SEO cancelled the Statement of Claim No. 158 (the former 41T3 permit).

A letter was sent to the City by the State Engineer's Office (SEO) on October 7, 1983 stating that an uncapped abandoned well was found with dirt partially filling the well and that it was a hazard. The letter further stated the well was in violation of the construction standards of the SEO. The SEO asked the City to take prompt action to either properly abandon the well or properly secure it with a metal cap. The City showed a blatant disregard for the safety of the public who encountered the well, violated SEO standards for wells, and provided a direct conduit to the aquifer through which contamination could be introduced for an extended period of time. The well was later capped at an unknown date.²

On July 27, 2016, the City of Laramie filed permit 205989 with the SEO for a monitor well at the former 41T3 site. Without any supporting evidence, the permit application claimed that the well had been used for monitoring purposes since 2013. The permit number is U.W. No. 205989 and has a priority date of August 2, 2016. There is no beneficial use of the water. The permit application states that the well is located on land owned by the University of Wyoming, but the application did not include an access agreement or right-of-way for obtaining ingress-egress to the well for monitoring purposes. The application form requires that the agreement for access with the landowner **must** accompany the application. No access agreement was attached. No access agreement exists. The University of Wyoming did not sign the permit as an owner of the land where the well would be located and has not given its consent. Further, the application states that "This is a refile of cancelled Permit No. S.C. No. U.W. 158 as a monitor well only." The permit application was approved by the SEO.

The City is claiming an ownership interest in the "41T3 Well" without any proof of ownership. The City cancelled and abandoned the original pipe in the ground they now claim is the 41T3 Well. The University of Wyoming owns the parcel of ground and all real property interest associated with the parcel. The University of Wyoming owns the real property at the 41T3 site and objects to the City's attempt to use this cancelled and abandoned well as the basis for a new well, at a new depth and at a new location. In Wyoming, transfer of any interest in real property must be in writing. In addition, at the moment in time that the SEO cancelled the old permit for the 41T3 well on August 24, 1977, all interest of the City terminated. No writing exists giving the City any ownership interest at the 41T3 site.

The City later applied for a water supply well named "41T3 Well" in the NE ¼, NE ¼ Section 35, Township 16 North, Range 73 West. The permit number is U.W. No. 207285. The suggested beneficial use is Municipal. The priority date is April 12, 2017. The location of the well on the permit is in the same quarter-quarter section as the existing 41T3 bore hole and that quarter-quarter section is land owned by the University of Wyoming. The application for permit to appropriate groundwater does not provide a latitude-longitude. **The permit application states that the well depth will be 246.2 feet deep** and requests an instantaneous

² The SEO should order Laramie to properly plug and abandon the 41T3 well bore to protect underground aquifers.

pumping rate of 1,500 gallons per minute (gpm). The annual volume of water requested is 2,419.5 acre-feet (786,337,500 gallons).

Permits U.W. 208285 and U.W. 208989 should be cancelled and the SEO should require the City to apply for a new Permit in compliance with Wyoming law.

The permit application states that the well is located on land owned by the University of Wyoming. A note entered into the SEO on-line permit review log on April 28, 2017 by SEO staff stated, "At the time of filing **no access agreement in place between the City of Laramie and the landowner**. Negotiations are in process." Discussions with University staff indicate the City has never approached UW for access. More important, UW as the surface estate owner has never provided its consent. The City obtained the permit for the municipal use under false pretense by representing to the SEO that access could be obtained and that negotiations were "in process". The following excerpt is text from the UW Irrigation Water Supply Level II Study (Wyoming Groundwater, 2018), page 22:

"On August 2, 2016, the City of Laramie filed for and received a permit from the State Engineer's Office for 41T3 as a monitoring well (Appendix B). Although the City now has a permit for the well, **access to the well is problematic because the well is located on UW property and a well access agreement between the City and UW has not been established. Because the original permit had been cancelled and the well was not plugged and abandoned at that time, ownership and legal authority regarding the well is uncertain**. Regardless, on April 3, 2017, in response to a proposed work plan to pump test 41T3, Wyoming Groundwater received a notice from the City attorney denying access to the well and denying the request to conduct a pump test at 41T3. The notice was provided to the WWDO and UW for review and consideration. Upon review, the WWDO and UW directed Wyoming Groundwater to not pursue any further testing of 41T3." [emphasis added].

The SEO noted that the City claimed that access negotiations were in process. Obtaining a well permit is a legal process and misrepresenting fact is perjury. The City knew it did not have access or consent for the existing well, much less for a new well for appropriating water for beneficial use.

Not only did the City not have access to the property, but the equitable principal of Laches also now bars any claim to the former 41T3 well. The City cancelled and abandoned the 41T3 Statement of Claim in 1977. Any interest the City had was terminated on August 24, 1977 and reverted to the owner of the real property, the University of Wyoming. The City then waited nearly forty years to make any claim or assert any right to the interest in real property that belongs to the University of Wyoming.

The existing 41T3 well is open to both the overlying Satanka Formation and the Casper Formation. The City has analyzed the 41T3 well as recently as 2014. The assessment performed on behalf of the City clearly stated that the well is constructed in a manner that is not consistent with the minimum well construction standards of the SEO. The well poses a threat to the quality of the Casper Aquifer that the City vehemently claims is vulnerable and

needs protection. The claim of vulnerability was the basis of the City demanding that the University submit a site-specific investigation for drilling the UW Well A. Yet for nearly 80 years the City has never offered to correct the problem by properly plugging and abandoning the well at its own cost.

As indicated above, the permit application for U.W. No. 207285 states that the estimated depth of the new 41T3 well will be 246.2 feet. This depth will not fully penetrate the Casper Aquifer. The permit to construct application for the 41T3 well prepared by Engineering Associates and filed with DEQ in February, 2021 states the depth of the 41T3 well will be **up to 810 feet** which will fully penetrate the Casper Aquifer. Proper application of the SEO Rules should require a separate application to deepen a properly permitted well. The City has not followed the process set forth by Rule § 2-8 to deepen a well, State Engineer Rules, § 2-8. If the new permits are not cancelled, pursuant to this request, the SEO should require the maximum depth of the new well be limited to 246.2 feet as indicated on the permit application.

The City now seeks to drill a new well at a new location without a new permit. The City plans to deepen the well and move the well to a new location without following the procedure set forth in Wyoming Statutes. The law provides:

(a) An appropriator of underground water may change the location of his well to a point within the same aquifer in the vicinity of the original location, without loss of priority, by securing approval of the state board of control if the groundwater right has been adjudicated or if the groundwater right has not been adjudicated but the water has been applied to beneficial use. In cases involving domestic or stock water wells which are not adjudicated but the water has been applied to beneficial use, the state engineer may approve a change of location. **If the right is not adjudicated and the water has not been applied to beneficial use, approval for the change in location may be granted by the state engineer. No petition shall be granted if the rights of other appropriators shall be injuriously affected thereby.** No petition granted shall increase the total amount of the appropriation of water set forth in the original permit. The state board of control and the state engineer may make such regulations as may be necessary to carry out the provisions of this section. The state engineer may approve a change of well location even if water has not been applied to a beneficial use.

(b) A decision by the state engineer granting or denying a petition to change the location of an unadjudicated right under this section may be appealed to the board of control. An appeal may be taken to the district court pursuant to W.S. 16-3-101 through 16-3-115 from an order of the board of control: (i) Affirming or reversing a decision of the state engineer appealed to the board under this subsection; or (ii) Granting or denying a petition to change the location of an adjudicated right under this section.

W.S. § 41-3-917.

Based on information and belief, no request has been filed with the SEO to either deepen the well to over 800 feet nor to drill the well at an entirely different site from the 41T3 bore hole and in the middle of a city street. In addition, since the old 41T3 well has never produced, no water has ever been put to beneficial use from this well, and the new permit is for a well at a much deeper total depth, the SEO should establish the priority date of any new City well as the time of the successful completion of the well. The SEO should take immediate steps to prevent drilling of the well under the permits until the city complies with Wyoming law. Allowing the City to drill wells under void permits in an attempt to gain priority over a lawful appropriator only to pursue interference claims should not be condoned or allowed. U.W. will be injuriously affected if the City is allowed to drill a well under the existing permits.

The City's attempt to use the original 41T3 well bore, which never produced water and where the permit was cancelled in 1977, to drill a new well in the Casper aquifer must be rejected. The two subsequent permits, U.W. 207285 (monitor well) and U.W. 205989 (Casper Aquifer production well), have no relation other than the "41T3" name to the original 41T3 well bore. Those permits which failed to comply with Wyoming law and which are dramatically inconsistent with each other and the original 41T3 permit must be cancelled. If the city desires to drill an 800 foot well in a city street they need to obtain a new permit.

Regards,
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