

DEPARTMENT OF  
NATURAL RESOURCES AND CONSERVATION  
BOZEMAN WATER RESOURCES REGIONAL OFFICE



JUDY MARTZ, GOVERNOR

STATE OF MONTANA

(406) 586-3136

*Rep. MANN TT*

September 3, 2003

151 EVERGREEN DRIVE

BOZEMAN, MONTANA 59715

Tony Kolnik  
81481 Gallatin Road  
Bozeman, MT 59715

*X* Re: Zoot Enterprises Complaint

Dear Tony,

Since our conversation in my office, I have received additional information from Zoot Enterprise's representatives regarding their current water use. Records are kept on a daily basis for the cooling system water temperatures. The cooling water is discharged back into the groundwater with no consumption occurring via a clear water drainfield. The difference in temperature between the incoming and discharged water varies from 0 to 10 degrees Fahrenheit depending on the outside temperature. When the outside air temperature is 50 degrees or lower, outside air is used to cool all but the computer room, which reduces demand on the cooling wells.

*X* Water use for the Zoot building, other than for cooling, is currently for approximately 100 employees and the fuel cells. Based on metering data, the average daily use is 3800 gallons per day. While the water is pumped at a rate of 375 gallons per minute, the pumps run for short periods (minutes) to replenish the pressure tanks. There is currently no conservation occurring. It is estimated that around 75% of this water is treated and returned to the groundwater via the septic drainfield.

*X* This current amount of use is relatively small and no adverse effects have been identified to be occurring presently. For this reason, I am not pursuing enforcement action against Zoot at this time. We will proceed with the pending application and work through that process.

If you have any questions please contact me.

Sincerely,

*Scott Compton*  
Scott Compton  
Regional Manager

enc

WATER POLICY INTERIM COMM.  
APRIL 29, 2008  
EXHIBIT 13

JACK

*Scott C  
FVJ  
Jack*

OFFICE OF THE GOVERNOR

STATE OF MONTANA



JUDY MARTZ  
GOVERNOR

RECEIVED

APR 05 2004

D.N.R.C.

STATE CAPITOL  
PO Box 200801  
HELENA, MONTANA 59620-0801

April 2, 2004

Mr. Tony Kolnick  
750 Cherry Ave.  
Bozeman, MT 59718

RECEIVED

APR 09 2004

DNRC - BOZEMAN  
REGIONAL OFFICE

RE: Zoot Enterprises Water Use

Dear Mr. Kolnick:

Thank you for your March 4, 2004, letter regarding Zoot Enterprises and their water use in the Four Corners area. I have asked DNRC about this matter. I understand that similar questions have been asked of and answered by the DNRC's Bozeman Regional Office.

Zoot is using a small amount of water in its commercial building from the large wells it has developed prior to having received a permit to do so. It is my understanding that the wells are eventually intended to serve, and the permit applications are for a much larger water use on this commercial property. The amount of groundwater currently being used is ordinarily exempt from having to file for a permit (less than or equal to 35 gallons per minute or 10 acre-feet per year). But because of the size of the pump being used was sized and installed for a much larger development, they are pumping more than 35 gpm periodically, to fill their pressure tanks in bursts of a matter of minutes. If they were to install smaller pumps, with which they could meet their current needs, their groundwater use would not be subject to the permitting requirements. Since this use could be made completely legal by simply installing smaller pumps, and there is no apparent adverse impact to existing water rights, we have not considered it an enforceable violation.

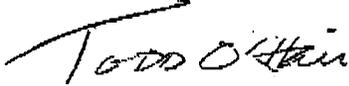
As for the fuel cells, it is my understanding that they are discharging only 1.5 gpm and discharging half of that to their clear water discharge pond. This is roughly one-third of what a typical garden hose can produce. This use is a small component of the permit applications they have already submitted.

Mr. Tony Kolnick  
April 2, 2004  
Page 2

It is the long-standing policy in water rights administration to pursue compliance when violations are identified. This is especially true where the violations are minor and are not interfering with the ability of existing water right holders to obtain their legal entitlement. Zoot is in the process of complying. If Zoot fails to meet the criteria for issuance of a water use permit for its development, enforcement action will be reconsidered.

Thank you for bringing this matter to my attention.

Sincerely,



TODD O'HAIR  
Natural Resources Policy Advisor

cc: Sen. Mike Wheat  
Rep. Chris Harris  
Bud Clinch, Director DNRC

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
BOZEMAN WATER RESOURCES REGIONAL OFFICE



BRIAN SCHWEITZER  
GOVERNOR

STATE OF MONTANA

PHONE: (406) 586-3136  
FAX: (406) 587-9726

2273 BOOT HILL COURT, SUITE 110  
BOZEMAN, MONTANA 59715-7249

July 21, 2006

Utility Solutions  
Attn: Barb Campbell  
PO Box 10098  
Bozeman, MT 59719

Re: Water use in Northstar Subdivision

Dear Ms. Campbell,

The Department of Natural Resources and Conservation (Department) has investigated the use of water from the central water supply system for the Northstar Subdivision. The Department has not issued a final decision on the application for a permit (#41h 30012025) for water use within this subdivision so a water right does not exist at this time. Your letter of 7/20/2006 identifies the current use of water for flushing lines, testing hydrants and setting computer systems. You indicate that it is your understanding that these type of 'activities' do not violate any Department permitting requirements. Your letter does not identify that the water is ultimately being used to irrigate newly seeded trail corridors, which I personally observed on the afternoon of 7/20/2006. We discussed this irrigation use in a phone conversation after my site visit and identified that Utility Solutions does hold water rights in the Beck-Border ditch which could be used for the irrigation with the proper equipment.

Your use of water currently occurring to flush lines, test systems and irrigate newly seeded areas is an unauthorized use and a violation of the Water Use Act (MCA §85-2-302). Such purposes require a water right be acquired prior to their use, and final action has not been taken regarding your pending application which would cover these uses. These activities must cease immediately. The Department hereby gives you notice pursuant to Mont. Code Ann. § 85-2-115 that one of its employees will be conducting an on-site investigation in the next 10 days.

Montana law provides civil and criminal penalties for the violation of the Water Use Act. Mont. Code Ann. § 85-2-122. Violators can be fined up to \$1000 a day per violation, with each day of violation constituting a separate violation.

The DNRC has the authority to request the County Attorney to take legal action against you if necessary. That can include criminal prosecution, proceedings to collect the fines imposed against you, and proceedings to obtain an injunction. Mont. Code Ann. § § 85-2-114, 116, 122.

Please contact this office immediately if you have any information that can help resolve this matter prior to the investigation being conducted.

Sincerely,

Scott Compton  
Regional Manager  
Montana Dept. of Natural Resources and Conservation

Cc Matt Williams  
Don MacIntyre  
Jack Stults  
Marty Lambert  
Tim Hall  
Anne Yates

## Utility Solutions LLC Violation Status Report

September 14, 2006

Scott Compton, Bozeman Regional Manager  
Montana Dept. of Natural Resources and Conservation

### Site visit and background of violation

A site visit to the proposed Utility Solutions LLC water service area (Northstar and Galactic Park subdivisions) was conducted on 9/5/2006 as a follow-up to the Department of Natural Resources and Conservation's (department) letter of violation issued to Utility Solutions on 7/21/2006 and a letter of complaint filed by attorney Arthur Wittich dated 8/29/2006. His letter contends that an unauthorized appropriation of water is occurring from large commercial wells (Utility Solutions well system) for the referenced subdivisions. The department's 7/21/2006 letter was regarding the unauthorized use of water for flushing and testing water lines and irrigation of newly seeded grass areas. At the time of the letter, water for domestic use was not identified as occurring nor identified specifically in the violation notice.

Utility Solutions came into compliance within days of the violation letter by converting the identified irrigation via the fire hydrants of the central water system to a pump system from a ditch which has valid water rights. A subsequent site visit on 8/8/2006 (after a discussion with an area resident) found three more areas that continued to be irrigated via the central water system. A phone call was made to Barb Campbell at Utility Solutions to verify that was the case and it was. Utility Solutions then came into compliance by constructing three wells to irrigate these areas and they were disconnected from the central system.

Mr. Wittich's letter also inferred that newly constructed residences within the two subdivisions were being supplied water from the central system. The 9/5/2006 site visit confirmed that two recently completed houses have been hooked up to water. One is in the process of being occupied and the other is a 'Parade of Homes' house for display. The former has no landscaping completed and the latter was being landscaped, both had useable plumbing. A phone call with Barb Campbell on 9/11/2006 confirmed that the two residences referred to above and the Zoot Enterprises office building are connected to the central system, as well as "a couple" of commercial sites. Ms. Campbell explained that Utility Solutions has a contract to supply water to the Four Corners Water and Sewer District for users within the district and supplies water meters to those hooking up to the system. The district is responsible for billing for water use but is not currently billing any user do to some rate issues.

Violation status

The main consumptive uses that were identified as a violation have been converted to use water from other legally available water sources. This part of the violation has been rectified.

Any domestic use (or other use outside of fire protection) of water from the central water system is a violation by Utility Solutions as there is no water right, issued or pending, that can be used via that system. (Permit #115469-41H has been granted via a final order but contains conditions that have not been met yet for its use to commence and the right is the subject of a District Court case). The domestic/commercial use that is occurring is very minor in amount, but still a violation. Utility Solutions is using approximately .02 acre feet (7000 gallons) of water per week.

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION

BOZEMAN WATER RESOURCES REGIONAL OFFICE



BRIAN SCHWEITZER  
GOVERNOR

STATE OF MONTANA

PHONE: (406) 586-3136  
FAX: (406) 587-9726

2273 BOOT HILL COURT, SUITE 110  
BOZEMAN, MONTANA 59715-7249

September 18, 2006

Ms. Barbara Campbell  
Utility Solutions, LLC.  
PO Box 10098  
Bozeman, Montana 59719

**Re: Request for Interim Permits under Application Nos. 41H-30012025 and 115469**

Dear Ms. Campbell,

The Department is in receipt of your letters dated September 6, 2006, requesting interim permits under the above references applications. As you recognized in your letters, the Department has issued a Proposal for Decision (PFD) for Application #41H 30012025 and Final Order for Application #115469. You request that the Department issue interim permits with modifications to the conditions as proposed/issued in those decisions. The modification would be that water be left in the river as any mitigation for potential adverse affect without the requirement for a change authorization being in place.

As you know the Department has discretion under Mont. Admin. R. 36.12.104 to issue an interim permit. The Department will not issue interim permits for use of water under the applications with conditions different than those already recognized as needed to prevent adverse affects from occurring . PFD and Final Order conditions require that an augmentation plan 'be in place and operating' prior to use of the Permit.

The Hearing Examiner placed the conditions on the permits to avoid adverse effect to other appropriators and with the agreement of all parties to the cases on the need to augment for adverse effect. The augmentation plan would use water that is subject to the Proposal for Decision in Application to Change Water Right No. 41H-30014080, which is not yet final. Although the Proposal for Decision on the Application for Change recommends issuance, it is not a final decision of the Department legally authorizing use of that water for augmentation. The Department will not allow you to use water for a use, i.e. for augmentation, that has not yet been finally, legally approved.

Letter to Barbara Campbell  
9/18/2006  
Page 2 of 2

Sincerely,

A handwritten signature in cursive script that reads "Scott Compton". The signature is written in black ink and is positioned above the printed name.

Scott Compton, Manager  
Bozeman Regional Office

- c. Don MacIntyre
- Terri McLaughlin
- Anne Yates
- Tim Hall

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
BOZEMAN WATER RESOURCES REGIONAL OFFICE



BRIAN SCHWEITZER  
GOVERNOR

STATE OF MONTANA

PHONE: (406) 586-3136  
FAX: (406) 587-9726

2273 BOOT HILL COURT, SUITE 110  
BOZEMAN, MONTANA 59715-7249

September 19, 2006

Utility Solutions  
Attn: Barb Campbell  
PO Box 10098  
Bozeman, MT 59719

Re: Water use in Northstar and Galactic Park Subdivisions

Dear Ms. Campbell,

The Department of Natural Resources and Conservation (department) continues to investigate the use of water from the central water supply system for the Northstar and Galactic Park Subdivisions. Your previous cooperation in ceasing the use water from the central system for irrigation purposes is appreciated and has rectified the unauthorized use identified to you by my letter of July 21, 2006. However, the department received a letter from Art Wittich dated August 29, 2006, alleging further unauthorized water use by houses in Northstar and Galactic Park Subdivisions.

I investigated the allegations on site on September 5, 2006. In addition, I confirmed with you by telephone on September 11, 2006, that two houses and commercial building were using water through the central system for the subdivisions. The department has not issued a final decision on the application for a permit #41H 30012025 or application for change in existing water right #41H 30014080 for water use within these subdivisions, so a useable water right does not exist at this time.

The department finds that the use of water currently being supplied to these residences and commercial sites is a violation of the Water Use Act (MCA §85-2-302) since you do not have a useable water right for such purposes. Final action has not been taken regarding your pending application which would cover these uses. You have until October 19, 2006 to voluntarily comply by ceasing use of water via the central water supply system for the Northstar and Galactic Park Subdivisions per MCA §85-2-114(4). The Department hereby gives you notice pursuant to Mont. Code Ann. § 85-2-115 that one of its employees will be conducting an on-site investigation in the next 30 days.

Montana law provides civil and criminal penalties for the violation of the Water Use Act. Mont. Code Ann. § 85-2-122. Violators can be fined up to \$1000 a day per violation, with each day of violation constituting a separate violation.

**DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION****BOZEMAN WATER RESOURCES REGIONAL OFFICE****BRIAN SCHWEITZER  
GOVERNOR****STATE OF MONTANA**PHONE: (406) 586-3136  
FAX: (406) 587-9726

November 6, 2006

2273 BOOT HILL COURT, SUITE 110  
BOZEMAN, MONTANA 59715-7249Barbara Campbell  
Utility Solutions LLC  
PO Box 10098  
Bozeman, MT 59773 0098**Re: Water Use in Northstar and Galactic Park Subdivisions**

Dear Ms. Campbell,

The Department of Natural Resources and Conservation (Department) has completed its investigation of the use of water from the central water supply system for the Northstar and Galactic Park Subdivisions. On September 19, 2006, I sent you a letter requesting that you voluntarily cease using water without a permit. The Department's September 19, 2006 letter was regarding the unauthorized use of water from the Utility Solutions central water system in houses and commercial buildings within the Subdivisions. This water use is unrelated to previous unauthorized water uses raised to you by my letter of July 21, 2006, concerning water from the central system for irrigation purposes, which you voluntarily rectified.

On October 24, 2006, I made another site visit to the Subdivisions. My site visit verified that the unauthorized water use is still occurring in the Subdivisions. This confirmed our conversation of October 19, 2006, in which you stated that pumping was continuing in order to supply water to residences and businesses hooked into the central supply system. Two locations are confirmed to be using water (Zoot office building and an occupied residence at 30 Milky Way) and a number of commercial buildings appear to be using water as the businesses are actively operating (Comfort Systems of Montana, Slabworks of Montana, Mountain Medical, Bridger Lighting, Pro-Phase and several unnamed shops). There are also 12 more sites with construction started on homes.

The Department has issued to you a temporary, interim permit under Beneficial Water Use Application No. 30023457-41H for limited water use in Galactic Park Subdivision which would allow the limited uses in Galactic Park identified on my October 24 site visit. The Department has not issued a final decision on Utility Solutions' Application for a Beneficial Water Use Permit #41H 30012025 or Application for Change in Existing Water Right #41H 30014080 for water use within Northstar, and consequently a legal water right does not exist at this time. Therefore, while the amount of water use in Northstar appears to be small, it is still not authorized and is in violation of the Water Use Act. Mont. Code Ann. §85-2-302.

Letter to Barbara Campbell  
11/6/2006  
Page 2 of 2

Pursuant to Mont. Code Ann. §85-2-114(4) and by letter dated September 19, 2006, the Department gave you thirty days to voluntarily cease the unauthorized use of water. That time has passed, and you continue the unauthorized use of water for the Northstar Subdivision. Montana law provides civil and criminal penalties for the violation of the Water Use Act. Mont. Code Ann. §85-2-122. While the Department may elect not to pursue injunctive relief impacting third parties (businesses in Northstar), Utility Solutions can be fined up to \$1000 a day per violation, with each day of violation constituting a separate violation.

Contact this office immediately to address this matter.

Sincerely,



Scott Compton  
Regional Manager  
Montana Dept. of Natural Resources and Conservation

Cc: Tim Hall  
Anne Yates  
Terri McLaughlin

DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION  
BOZEMAN WATER RESOURCES REGIONAL OFFICE



BRIAN SCHWEITZER  
GOVERNOR

STATE OF MONTANA

PHONE: (406) 586-3136  
FAX: (406) 587-9726

2273 BOOT HILL COURT, SUITE 110  
BOZEMAN, MONTANA 59715-7249

November 6, 2006

UTILITY SOLUTIONS  
%BARBARA CAMPBELL  
PO BOX 10098  
BOZEMAN MT 59773 0098

Subject: Permit Application Number 41H-30023457

Dear Ms. Campbell,

This letter is in response to your request for an Interim Permit on the above application. The Department can issue an Interim Permit provided there is not substantial information to show the permit criteria cannot be met.

In this instance, the Department determined that an Interim Permit can be issued for the following reasons:

1. The Zoot application record states that prior appropriators are adversely affected only during the irrigation season. This application proposes the same withdrawals as the Zoot Permit 115469-41H, however, under a different exception, municipal use.
2. Water will not be used for irrigation from now until April 1, 2007.
3. The consumptive use of water will be approximately .02 acre-feet. This figure was based on 7000 gallons of water diverted for the business and the 2 houses.  
 $7000 \text{ gallons/week} \times 22 \text{ weeks} = 154,000 \text{ gallons}$   
 $154,000 \text{ gallons} \div 325851 \text{ (gallons in an acre-foot)} = .47 \text{ acre-feet/22 weeks}$   
 $.47 \times .05 = .02 \text{ acre-feet consumed over 22 weeks.}$

The .05 is based on the information provided in your application that states 95% of the water that is diverted will return to surface or ground water and that only 5% of the water that is diverted for domestic use is consumed.

Your Interim Permit expires on April 1, 2007. If you have any questions, please contact the Bozeman Water Resources Regional Office.

Sincerely,

Scott Compton  
Regional Manager  
Montana Dept. of Natural Resources and Conservation

Form No. IP N1997



**STATE OF MONTANA  
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION**

**INTERIM PERMIT TO APPROPRIATE WATER**

This Interim Permit is granted upon finding there is no substantial information available to the Department to show the criteria for issuing a Provisional Permit under Section 85-2-311, MCA, can not be met.

- INTERIM PERMIT NUMBER: 41H-30023457
- PRIORITY DATE: AUGUST 2, 2006 4:55 PM
- ISSUED TO: UTILITY SOLUTIONS  
%BARBARA CAMPBELL  
PO BOX 10098  
BOZEMAN MT 59773 0098
- The source and point of diversion of this appropriation may be from one of three wells in the E1/2W1/2W1/2, Section 11, T2S, R4E, Gallatin County. Only one well may be used at any given time.
- The flow rate shall not exceed 300 gallons per minute up to a total diverted volume of .5 acre-feet for the term of this Interim Permit.
- The total volume of water consumed shall not exceed .02 acre-feet for the term of this Interim Permit.
- The use is located in Galactic Park Subdivision at the 2 completed homes existing as of this date and the Zoot business location. The general legal land description is the W1/2, Section 11, Twp. 02S, Rge. 05E, Gallatin County.

**THIS INTERIM PERMIT IS SUBJECT TO ALL PRIOR WATER RIGHTS AND THE FOLLOWING CONDITION:**

- The water authorized under this interim permit shall not be used for watering lawns or gardens.
- Water use shall be recorded and reported to the Bozeman Regional Office on the last working day of each month during the permitted period.
- The applicant must rotate pumping among the three production wells so no more than one well is pumped at a time. Each well pumping cycle must last no longer than 24 hours

**THIS INTERIM PERMIT EXPIRES ON APRIL 1, 2007.**

November 6, 2006

  
 \_\_\_\_\_  
 WATER RESOURCES DIVISION

The Issuance of this interim permit does not entitle the applicant to a provisional permit, and approval of the application for a provisional permit is subject to the procedures and criteria set out in the Montana Water Use Act.

A person may not obtain any vested right to an appropriation obtained under an interim permit by virtue of the construction of diversion works, purchase of equipment to apply water, planting of crops or other action where the provisional permit is denied or is modified from the terms of the interim permit.