



**REPORT TO JUAN DE FUCA WATER DISTRIBUTION COMMISSION
MEETING OF TUESDAY, 3 FEBRUARY 2009**

SUBJECT: SUN RIVER ESTATES VS THE CAPITAL REGIONAL DISTRICT IN THE SUPREME COURT OF BRITISH COLUMBIA

PURPOSE: To report on the Reasons for Judgment.

BACKGROUND:

Sun River Estates Ltd (Sun River) objected to being subject of water development cost charges (DCC) in relation to its 715 lot subdivision in the District of Sooke.

Sun River claimed that the CRD had been unjustly enriched by requiring Sun River to construct the Philips Road pipeline (PRP), the reservoir and pump station required to service the Sun River Estates. Sun River sought a credit of \$2.1 million for the installation of the pipeline, reservoir and pump.

Alternatively, Sun River argued that if the Development was incorrectly included in the service area for DCC, Sun River should not be subject to DCC and should be repaid the DCC it has already paid as well as relieved from paying any DCC to the CRD for the balance of the project. Sun River sought an order excluding it from the DCC area.

In defense the CRD argued that Sun River entered into binding agreements to construct at its own expense and to transfer over the subject facilities in order to obtain the rezoning bylaw, development permits and subdivision approvals which would allow the development to proceed. The CRD contended that as the pipeline had been constructed prior to adoption of the bylaw that included the Sun River development in the bylaw and was therefore not eligible for funding under the DCC program. (The pipeline had been included in the DCC calculation in error and was subsequently removed). The CRD took the position that as the reservoir and pump station serviced only the development it was not eligible for DCC funding and consequently was not included in the DCC calculation. In addition the CRD raised the six-month limitation defense under the Local Government Act.

The judgment addressed the following questions:

1. Was the defendant unjustly enriched?
2. If so, what is the appropriate relief?
3. Is the plaintiff barred by the six-month limitation period under section 285 of the Local Government Act?

The trial took place April 21 – 25 and July 31, 2008.

In his Reasons for Judgment the Honourable Mr. Justice Masuhara concluded:

“The dispute in this case arises from Sun River’s timing and an error in the revisions to the CRD’s water DCC program and resultant rates. However, I do not find these elements as factors establishing that the CRD was unjustly enriched. Land development ventures can be highly profitable, but they come with commensurate risk. An aspect of the risk was Sun River’s decision to proceed with the Development in advance of the PRP being included as a DCC project or without negotiating an agreement to deal with water DCCs. No mitigating provision was negotiated regarding water DCCs. Sun River committed in binding agreements to build the PRP, the reservoir and pump station at its expense. In exchange, it received the requested authorizations to proceed with its development. The case for restitutionary relief has not been made out. Further, the six-month limitations period under s. 285 of the *Local Government Act* is applicable and serves as a bar to this action. In the circumstances, a remedy at law is not available to the plaintiff. The plaintiff’s action is dismissed.”

RECOMMENDATION:

That the Juan de Fuca Water Distribution Commission receive the staff report for information.

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