

MEMORANDUM

DATE: August 26, 2014

TO: Water Right File 61-7751

FROM: Shelley W. Keen 

RE: Well Ownership

On August 13, 1999, Ricki Holden obtained Permit 61-7751, which authorized him to divert and use water from a well for domestic use in two duplexes located within Lot 17, Block 1, Airport Subdivision. Hiddleston and Son, Inc., drilled the well in September of 1999 at the east end of the aforementioned Lot 17.

On May 10, 2001, Ricki Holden entered into a "Joint Well Use and Maintenance Agreement" (the "agreement") with Loree M. Saunders, owner of the E½ of Lot 16, Block 1, Airport Subdivision. The agreement arranges for Holden and Saunders and their successors to have "joint ownership, use, and maintenance" of the well drilled on Lot 17. The agreement limits the use of water from the well to domestic purposes, including yard irrigation.

Holden submitted proof of beneficial use for Permit 61-7751 on June 14, 2004. At that time, two duplexes had been constructed on Lot 17, as had been authorized by Holden's permit. One of the duplexes is located near the east end of Lot 17, and the other is located near the west end of Lot 17. At that time, there was also a dwelling on the E½ of Lot 16, the Saunders property.

When approached by IDWR about obtaining a water right for use of water on the E½ of Lot 16, the new property owner suggested that the agreement entitles him to a portion of Permit 61-7751. I discussed the permit and the agreement with Deputy A. G. John Homan, and we've concluded that the assertion appears unfounded for three reasons. First, Holden has not assigned any portion of Permit 61-7751 to anyone else or indicated to IDWR that the permit should cover anything other than the use on Lot 17. Second, ownership of diversion works, such as a well, does not constitute ownership of the right to divert water from the diversion works. And third, the agreement does not state that use of water from the well is exclusive to the E½ of Lot 16 and the E½ of Lot 17. The agreement may provide the owner of the E½ of Lot 16 an ownership interest in the well, but it does not necessarily provide him with a water right. To the extent there is a question about use of water from the well, it would be a contractual dispute between the new owner of the E½ of Lot 16 and Holden.

At this time, IDWR should issue Holden a license for the water use developed on Lot 17 in accordance with the permit. Anyone disagreeing with the license may request a hearing pursuant to Idaho Code § 42-1701A(3).