

Cox, Sharla

From: Rob Harris [rharris@holdenlegal.com]
Sent: Friday, January 27, 2012 5:52 PM
To: Cefalo, James
Cc: Cox, Sharla
Subject: Love's Well and Pump Use Agreement (Permit No. 35-14218)
Attachments: DOC012712.pdf

James:

Attached is the executed well and pump use agreement between Love's and Alan Widaman regarding Permit No. 35-14218. This should be all that is necessary to now finalize issuance of the permit.

If you have any questions, let me know.

Thanks,



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WELL AND PUMP USE AGREEMENT

THIS WELL AND PUMP USE AGREEMENT (this "Agreement") is made and executed this 34th day of January, 2012 by and between Love's Travel Stops & Country Stores, Inc., an Oklahoma corporation, of 10601 N. Pennsylvania Ave., Oklahoma City, OK 73120 ("Love's"), and Alan M. Widaman and Lynn M. Widaman, husband and wife, of 727 Rimview Ln. W., Twin Falls, ID, 83301 ("Widaman"). These parties are hereinafter collectively referred to as the "Parties" (individually, a "Party").

RECITALS:

- A. Love's has entered into a purchase and sale agreement for property located in the NW1/4NW1/4 AND SW1/4NW1/4 of Section 9 in Township 1N, Range 37E.B.M., the approximate outline of which is shown on Exhibit 1 attached hereto, and consists of Bonneville County, Idaho tax parcels RPO3660001001O, RPO3660001002O, RPO3660002002O, RPO3660002003O, RPO3660002001O, and RPO1N37E093682 (the "Property").
- B. The Property is generally located due east of a subdivision known as the Cross-Roads Subdivision, a commercial development. On December 31, 2002, the Idaho Department of Water Resources issued a license to Widaman for Water Right No. 35-13285 after Widaman complied with the procedures outlined in Title 42 of the Idaho Code in order to obtain such a water right for use on the Cross-Roads Subdivision.
- C. Pursuant to the permit to develop Water Right No. 35-13285, Widaman constructed a well in the SE1/4NE1/4NE1/4 of Section 8, Township 1N, Range 37E.B.M. (the "Culinary Well"). The well was constructed to Idaho Department of Environmental Quality ("IDEQ") standards for a public water system. The well and attending pump and pump house were constructed on a small lot that is identified as Parcel No. RPO07040001000A in the records of Bonneville County, Idaho (the "Well Lot").
- D. In addition to the public water system well, Widaman constructed a well for fire protection purposes (the "Fire Protection Well") near the Culinary Well. The Fire Protection Well is for use only when a fire exists, and therefore, does not require a water right license for its diversion and use.

- E. Love's desires to connect to the Culinary Well and Fire Protection Well to service a proposed truck stop and its attendant restaurant(s) and other facilities located on the Property. In order to receive authorization from the State of Idaho, Love's has submitted a water right permit application, which has been numbered 35-14218, for Love's culinary commercial purposes on the Property.
- F. Widaman desires to have Love's connect to the Culinary Well and the Fire Protection Well. Pursuant to the terms and conditions hereof, the Parties desire to enter into an agreement governing the use, repair, maintenance, allocation of costs, and other related issues as to the well and pump.
- G. In determining the ownership interest in the wells that should be allocated to Love's under this Agreement, the Parties have agreed to the following methodology: At maximum capacity, Widaman's Water Right No. 35-13285 will allow for the diversion of 2500 gpd per lot on 20 lots, for a total of 18,250,000 gallons per year total. Under Love's water right permit application No. 35-14218, at a maximum, Love's could divert 10,000 gpd, for a total of 3,650,000 gallons per year. The amount of water used by Love's in a total year (3,650,000) divided by the maximum total gallons that could be used by both Parties in a year (21,900,000), results in a percentage of .167, or 1/6, and therefore, Love's should have a 1/6 ownership interest in Culinary Well and the Fire Protection Well.
- H. In consideration of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENTS:

1. Connection and Purchase of Ownership Interest.

- a. Purchase of Interest in Culinary Well and Fire Protection Well. Love's shall pay to Widaman, contemporaneous with the execution of this Agreement, a one-time payment of [REDACTED] to purchase a 1/6 ownership interest in the Culinary Well, Fire Protection Well, and all of the improvements associated with Well Lot #RP007040001000A, including but not limited to its associated pump, structures, and attendant facilities located thereon up to the cross valve located at the intersection of Daisy Lane.
- b. Deed and Bill of Sale. Contemporaneous with the execution of this Agreement, Widaman will execute a deed and bill of sale substantially in the form of Exhibit 2 attached hereto granting to Love's a 1/6 ownership in the Culinary Well, Fire Protection Well, and all of the improvements associated with Well Lot #RP007040001000A, including but not limited to and its associated pumps, structures, and facilities, as contemplated herein, as well as the secondary easement

rights of access over, on, across, and through the Well Lot as contained in Idaho Code § 42-1102 and other applicable Idaho law that relate to the right of Love's to access the wells, pumps, and attendant structures for inspection, repair, maintenance, etc., of the system.

- c. Abandonment. In the event either Party abandons their interest in the well(s) for a period in excess of 180 days, the other Party shall thereafter assume whatever ownership interest is possessed at the time of abandonment by the abandoning Party.
2. Ownership of Underground Mainline. Ownership of the underground mainline and fixed attendant facilities that extend from the Culinary and Fire Protection Wells and the well house to the Property shall be owned 5/6th by Widaman and 1/6th by Love's. The underground mainline and its fixed attendant facilities that extend from the Property to the Cross-Roads subdivision at Daisy Lane (i) heading west shall be owned 100% by Widaman (unless and until, in Widaman's sole discretion, ownership in such mainline is conveyed to other persons or entities that may develop property in the Cross-Roads subdivision); and (ii) heading east shall be owned 100% by Love's.
3. Monthly Charges. Once the Love's truck stop facility is connected to the Culinary Well and Fire Protection Well and water is being used on the Property, every month, within thirty (30) days of receipt of a copy of the electrical charges made to Widaman for the wells, Love's shall pay the following to Widaman:
 - a. Repair and Maintenance Fund. One Hundred and Fifty Dollars (\$150.00) for deposit in a "Repair and Maintenance Fund" (addressed in Section 4 below) to be maintained by Widaman for both the Culinary Well and the Fire Protection Well.
 - b. Electrical Costs; Metering. A proportionate amount of the electrical charges incurred each month. This proportionate amount shall be calculated by taking the metered amount of Love's volumetric water usage and dividing by the total volumetric water usage from the Culinary Well. Love's shall thereafter pay the proportionate amount of water usage multiplied by the charges for the total electrical costs contained in the electrical billing. In order to accomplish the allocation of these electrical costs, both Love's and Widaman shall install the necessary meters to properly measure and account for each party's respective monthly volumetric usage. Therefore, Love's shall, at its sole cost and expense, install and maintain a meter on the line running to its property. Widaman shall likewise install and maintain a meter on the line running to the Cross-Roads subdivision. The water meters shall be read by the operator of the system (as described in Paragraph 6 below) on the _____ of each month, or alternatively, on the same day that the power company reads the electrical meter to determine electrical usage.
4. Repair and Maintenance Fund. All funds paid by Love's into the Repair and Maintenance Fund shall only be used by Widaman for repair and maintenance purposes for the Culinary Well and the Fire Protection Well and its associated structures, for taxes, insurance and/or

assessments from any governmental body and any testing that may be required by IDEQ to satisfy public water system requirements in Idaho. Funds from the Repair and Maintenance Fund shall not be used for any other purpose, unless agreed to in advance in writing by Love's. Love's shall have the right at any time to view and audit the Repair and Maintenance Fund account ledger or balance sheet (and related documentation), and shall receive written notice from Widaman any time funds are expended from the Repair and Maintenance Fund. The Repair and Maintenance Fund shall have a limit of Five Thousand Dollars (\$5,000.00), and when the fund reaches this amount, Love's shall not be obligated to make any further payments unless and until funds are used such that the amount in the Repair and Maintenance Fund drops below Five Thousand Dollars (\$5,000.00). The monetary limit of Five Thousand Dollars (\$5,000.00) may be adjusted by the Parties in the future by written agreement.

5. Costs in Excess of Repair and Maintenance Fund. In the event repairs or maintenance to the Culinary Well and/or the Fire Protection Well are necessary and the cost thereof is in excess of the total balance contained in the Repair and Maintenance Fund (and assuming each party has contributed its required funds), the Parties hereby agree to share all such costs necessarily incurred after the funds in the Repair and Maintenance Fund are exhausted (i) as to water production equipment and components (e.g. pumps, wells and electrical components), in proportion to their water usage, as outlined in Paragraph 3. b. above; and (ii) for non-production equipment and components (e.g. other facilities and transportation lines), in proportion to their ownership interests (i.e. 5/6th to be paid by Widaman; 1/6th to be paid by Love's).
6. Well and Pump Operator: Manner of Performance; Indemnity. Widaman shall remain the operator of the Culinary Well and the Fire Protection Well, and shall operate and maintain the wells on a day-to-day basis, in a good, workmanlike and commercially reasonable manner, and in compliance with the requirements of the IDEQ and other applicable laws, regulations, codes and legal requirements. If Widaman fails to timely or properly perform its obligations under this Section 6 and such failure continues for 5 days, Love's shall be entitled to perform such work on behalf of Widaman and Widaman shall reimburse Love's for all costs associated therewith, upon demand. During any such performance of work by Love's, Widaman shall be deemed to have granted to Love's a temporary, non-exclusive easement over, upon and in the Well Lot and adjacent lands owned by Widaman for purposes of access and such performance. Widaman shall defend, indemnify and hold Love's harmless from and against any and all claims, costs, damages, penalties and expenses (including without limitation, attorneys fees) asserted in connection with or resulting from any breach of the requirements of this Section 6 by Widaman.
7. Decisionmaking.
 - a. Unanimous Agreement. All decisions with respect to maintenance, repairs, rehabilitation and replacement of the Culinary Well and the Fire Protection Well and its attendant equipment shall be made only after unanimous agreement between the Parties, or the Parties shall proceed as outlined in subpart b. below.

- b. Dispute Resolution If There Is a Failure to Agree. In the event the Parties cannot agree to the scope or extent of maintenance, repairs, rehabilitation and replacement of the Culinary Well and the Fire Protection Well and its attendant structures, the following procedures shall govern:
- i. Each Party shall—at their sole cost and expense—employ a licensed engineer, a representative from a licensed well drilling company, or a pump repair company (the “Contractor”), to inspect the well(s) at issue and make recommendations on the work that should be performed in that person’s opinion.
 - ii. In the event both Parties’ Contractors agree as to the recommended work that should be performed, then such recommended work shall be performed.
 - iii. In the event the Parties’ Contractors disagree as to the that should be performed, the Parties’ Contractors shall agree to appoint a third Contractor and such third Contractor shall inspect the situation and the recommendation of the third Contractor shall dictate the work to be performed. Each Party shall share the cost of hiring the third Contractor.
8. Replacement of Culinary Well and the Fire Protection Well and Their Attendant Facilities. The Parties hereto agree to share all costs of replacement of all shared facilities and attendant equipment in the proportions outlined in Paragraph 5. above.
9. Additional Users of the Culinary Well and the Fire Protection Well.
- a. Users Within Cross-Roads Subdivision. It is specifically acknowledged by the Parties that Widaman intends to add additional Cross-Roads users to the Culinary Well and the Fire Protection Well as development continues within the Cross-Roads subdivision. Widaman may add such additional users without the consent of Love’s. In the event such users are added, they shall be required to pay an amount into the Repair and Maintenance Fund in alignment with their respective water usage.
 - b. Users Outside of Cross-Roads Subdivision. In the event Widaman desires to add an additional user that is outside of the Cross-Roads subdivision, Widaman must first obtain a Cross-Roads property owners vote, with Love’s to have a 1/6th vote and Widaman to have a 5/6th vote, in which event majority vote will rule. In the event such users are added, they shall be required to fund the Repair and Maintenance Fund, as outlined in Paragraph 9. a. above. Any connection fees will be divided and payable to the Parties, as follows: 1/6th to Love’s and 5/6th to Widaman.
 - c. Non-impairment. Notwithstanding the foregoing, in no event shall any addition of users to the Culinary Well and/or the Fire Protection Well by Widaman materially impair

the exercise by Love's of its rights under this Agreement or in relation to its attendant water right permit.

10. Consent to Love's Application for Water Right Permit and Water Rights Transfer: Widaman hereby consents to Love's Water Right Permit Application No. 35-14218, which seeks to include the Culinary Well as an authorized point of diversion under the water right permit. Widaman also consents to Love's inclusion of the Culinary Well as a point of diversion for irrigation water rights Love's intends to purchase and administratively move to the Love's property for the irrigation of approximately three (3) acres at the Love's property. Regarding this water rights transfer, Love's will designate two other small wells located on the Love's property as the primary sources of diversion for irrigation water, with the Culinary Well as a backup source of supply in the event the two small wells become inoperable for any reason.
11. Severance. Should any Party decide to withdraw from use of the Culinary Well and/or the Fire Protection Well and elect to receive water from other pumps and wells or other water delivery system, the Party must give thirty (30) days notice to the other Party. The severing Party will be solely responsible for all costs associated with the severance, including, but not limited to, all excavation costs and other removal costs associated with the severance. If severance from the water system requires disturbing the property of another Party, the severing party shall restore the disturbed property to its previous condition, as nearly as practicable.
12. Modification. This Agreement may not be modified, changed, discharged or terminated, except by a writing signed by all parties.
13. Entire Agreement. This Agreement constitutes the entire Agreement between the parties with respect to the transactions contemplated herein.
14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
15. Authority. Each party warrants and represents that the individual executing this Agreement on behalf of the party is duly and expressly authorized to so act on behalf of the persons and organizations he or she purports to represent, and each party acknowledges that each other party hereby relies upon that warranty and representation.
16. Governing Law. This Agreement shall be governed by the laws of the State of Idaho.
17. Enforceability. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the same shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had not been contained herein.
18. Waiver. Acceptance by either Party of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions

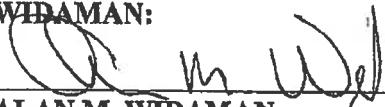
hereof. No waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

19. Binding on Successors. This Agreement shall be binding on the heirs, successors, administrators, executors and assigns of all parties hereto and shall run with the land. It is anticipated that the Cross-Roads Subdivision Property Owners Association will be successor in interest to Widaman hereunder.
20. Costs and Attorney's Fees. If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.

[EXECUTION PAGES TO FOLLOW]

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals the day and year first above written.

WIDAMAN:


ALAN M. WIDAMAN

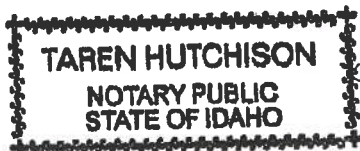

LYNN M. WIDAMAN

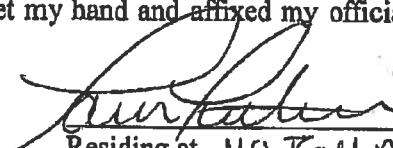
STATE OF IDAHO)

County of Twin Falls) ss.

On this 25th day of January, 2012, before me the undersigned notary public in and for said state, personally appeared ALAN M. WIDAMAN AND LYNN M. WIDAMAN, husband and wife, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me they executed the same.

IN WITNESS WHEREOF, I set my hand and affixed my official seal the day and year above written.



 Notary Public
Residing at 110 Kall Ave Twin Falls ID
My commission expires 11/15/2017

IN WITNESS WHEREOF the Parties hereto have hereunto set their hands and seals the day and year first above written.

LOVE'S:

LOVE'S TRAVEL STOPS & COUNTRY
STORES, INC.

By: [Signature]
Name: Doug Stussi
Its: Exec VP & CFO

STATE OF OKLAHOMA)
COUNTY OF OKLAHOMA)

SS:

This instrument was acknowledged before me on the 24th day of January, 2012,
by Doug Stussi, as Executive Vice President and CFO of LOVE'S TRAVEL STOPS &
COUNTRY STORES, INC., an Oklahoma Corporation.

My Commission Expires:
04/04/12

[Signature]
Notary Public; Commission No. 08003317

