

Keen, Shelley

From: Yenter, Cindy
Sent: Tuesday, April 13, 2010 1:36 PM
To: 'scalk2003@yahoo.com'
Cc: Robertson, Jean; Keen, Shelley; Homan, John
Subject: Subdivision Permits

Lawrence and Sandra –

I read through the covenant and well use agreements you provided for the Lincoln Co subdivisions, and discussed with Jeannie Robertson the options for assignment of the water right permits. I believe Jeannie forwarded to you some comments from Mr. Keen in Boise. We are still somewhat concerned that the development of these rights continues without interruption, once you have assigned them.

I spoke with IDWR's Deputy Attorney General, John Homan, regarding the formation of simple homeowner or water user associations. Mr. Homan indicates that while a well use agreement and covenants are certainly components of such associations, these documents alone are not an association. The association is the entity which packages everything together and creates a single organization with responsibility and authority to administer the components.

Mr. Homan further feels that property developers have an obligation to make sure that everything they set in motion with respect to that development actually gets completed. This would apply to water rights or roads or any other improvements which are promised with the sale of the property. Assigning a water right permit to an individual who is a homeowner in a subdivision is no guarantee that person will complete development of the right on behalf of the subdivision, or do anything else required to maintain the use of the right. The developer could still be held liable by the other homeowners for failing to provide a valid water right. Mr. Homan suggests that you establish a simple association for each subdivision, appoint an agent or director, and assign the water right permits to the association. This might cost a few hundred dollars, but would help protect you in the long run.

As Watermaster, I would also advise you that there will be ongoing obligations in Water District 130 for assessments, mitigation and water measurement which will apply to these subdivision wells. If mitigation fees and assessments are not paid, the water rights could be partially curtailed and all property owners would be affected by the loss of the right to irrigate from the wells. An association typically has more motivation to make sure these obligations are met, than would an individual.

You would need to consult with your attorney to determine the best type of entity to form, as there are several options available under Idaho law.

IDWR cannot force you to form associations for these subdivisions. We would strongly encourage you to visit with your attorney prior to making your final decision.

Please contact Jeannie Robertson again when you are ready to complete the assignments.

Regards,

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