

10/7/2023

Minutes – Special Meeting: Supplemental water

Erik - Called meeting to order at 10:03 a.m.

Erik- Recapped last meeting and recalled minutes. Erik then turned the meeting over to Scott.

Scott- Said he received emails from Paxton and a couple of other people with questions. Mike, Bryan, and Dan went to the water board and presented the questions, Scott did not attend. Scott nor the people attending the water board meeting received nothing in writing.

Erik - Informed everyone he had reached out to Nick Miller from the water board and got him to put answers to all the questions in writing.

(See attachment #1)

Steve - Motion to go ahead with the project and take advantage of Bryan's generosity.

Mike - Motion is only subject to people who want to be involved.

Erik - Motion need to address all questions/concerns not a blanket motion.

(See attachment #2)

Dan - proposes a second HOA strictly for the people who want the water.

Open discussion on legal concerns - Everyone agreed this needs to go to an attorney.

Marla will formulate an email with names, questions, concerns, etc for an attorney and email it to all residents before going to attorney.

Bryan and Mike will go to the attorney.

Mike - Item #6 needs to be removed from Erik's attachment.

Sarah H. - second that.

Marybeth - Who is paying for the attorney?

Response from the community - people who want the water.

Steve - Made a motion to move forward with the project and take advantage of Bryan's generosity with Eriks proposal.

Donna - second motion.

Erik- Called for vote – Vote was unanimous.

Erik – Adjourned meeting

(Attachment #1)

Hi Erik,

I have copied your questions below and provided answers that I hope are helpful.

1) What if member/members do not want to participate in the Proposed HOA water right?

From the perspective of the current application, the HOA can either remove those parcels from the proposed place of use on the application, or you can keep them on the application, but at the time of licensing the Department would not include those parcels on a license if the use was not developed for those members' parcels. I think part of what underlies this question as well as the other questions regarding individual, preexisting water rights, is that the proposed right will be owned by the HOA, so it will be owned in some part by each of the "members" whether those members use the water or not and whether they own individual rights in their own personal names. I am not an attorney, so take this with a grain of salt, but I would guess that all the members are subject to the bylaws of the HOA and, whether they use the water or use their own water, they would have some ownership interest in the water right. The opposite is not true – the HOA has no ownership interest in the water rights privately owned by its members. Again, I am not an attorney so I cannot speak to whether the HOA could adopt a bylaw that requires assessments or something of the like for all members regardless of whether they use the snake river water right.

2) Does the DWR need all members of the HOA to participate in the application?

No.

3) Will this potential HOA water right affect anyone in any way with an existing personal water right?

This will not impact the existing snake river water rights held by individuals for parcels in the subdivision. Since the community system is anticipated to be operated to deliver both Wilder Irrigation District water and water under the proposed new snake river water right, there could be implications to delivery of the Wilder water to those folks with personal snake river rights at times when there is a mix of snake river water and Wilder water in the community system. Those folks would have some right to get some Wilder water, but they wouldn't have a right to use the HOA snake River water, so that could create an operational challenge. From the discussions I had with some of your folks here on the 14th, this isn't likely to be an issue based on how quickly the Wilder Water ebbs and flows.

4) What happens to personal water rights of HOA members if the HOA obtains a water right?

Nothing happens to the personal Snake River water rights.

5) Will the member be able to use [their] water and the HOA water?

No. Any permit issued by IDWR to the HOA to divert and use water from the Snake River will not authorize the HOA to deliver Snake River water to parcels with existing rights from the Snake River.

6) Will the ability to obtain a NEW water right for future homeowners be impacted by the Proposed HOA water right?

I see three potential classes of home owners. Each has a different impact. First, those homeowners that already have snake river water rights will not, as discussed above, be affected by the HOA water right

and, since they already have a water right the question seems moot. Second is HOA members that do not have an existing Snake River water right and elect not to receive water from the proposed HOA right will not have a snake river water right and could apply at some point in the future for a new Snake River water right (either individually, or as part of some future second filing by the HOA to provide water to any parcels not covered by the presently contemplated water right or by individual rights). Third, those lands in the HOA that will be receiving water from this proposed HOA water right would not be able to apply for an individual right from the Snake River unless the HOA's right is changed such that it no longer provides water to that particular parcel. The takeaway here is that the Department doesn't "double up" on water rights for the same purpose from the same source for the same lands.

7) If there is NO impact on personal water rights for existing permit holders, will the DWR provide documentation explicitly guaranteeing existing personal water rights with no interference now and in the future?

I'm not sure exactly what you are asking for. Interference of what kind and by who? Existing permit and right holders will have senior water rights to the HOA's right, and the HOA's right will not authorize delivery to those lands, only the right holder can make changes to their personal water rights (through applications with IDWR). It seems like the most likely way the new HOA permit would impact existing water rights is if the HOA attempted to compel the existing permit holders to make some change to their water rights, which I doubt they would have the authority to do and isn't really an IDWR issue anyway.

8) Explain point of Diversion (POD).

A water right is a document that describes the extent of a right holder's ability to divert and use water in Idaho. A right describes several elements to accomplish this. One of those elements is the point of diversion – this is the location that a right holder can physically divert water from the natural source to convey it to a place of use (another element of a water right). The source of water, the amount of water, the season water can be diverted and used, as well as the beneficial use itself are all elements of a water right. Most of these elements can be changed through a process with IDWR called an "Application for Transfer" A water right can describe more than one point of diversion, and an additional points of diversion can be added through the Application for Transfer process. For example, let's imagine someone in the subdivision has an existing water right to irrigate five acres of land within their parcel by diverting up to 0.1 cubic feet per second (about 45 gallons per minute) from the Snake River through their private pump adjacent to their land. That person could file an Application for Transfer and propose to add the subdivision's pump as an alternate point of diversion, this would give them the flexibility to take their water from the community tap or from their own private pump, or both (provided they do not take more than 45 gallons per minute total from both pumps).

9) If POD is changed for HOA member(s), what is the process to reobtain if they chose too?

As described above, an existing user can change or add a POD to their existing water right through the Application for Transfer process with IDWR. If they just changed their POD to the HOA pump, they would need to go back through the Transfer process to move the POD back to their previous pump location. However, if they kept their existing POD on their right and added the HOA pump as an alternate POD, they could utilize either pump as described above, but if they ultimately want to extricate themselves from the HOA pumping system they can simply notify IDWR that they are abandoning the HOA POD from their personal water right and we will remove it.

10) Explain usage of supplemental water source.

A supplemental water source is an additional water right that would be used when the "primary" water supply is insufficient. For example, many folks have entitlements through irrigation districts (Wilder for example), but they also have water rights to divert from ground water so they can use the ground water

as a “supplemental” source when the supply of water from the irrigation district runs low or is cut off. In most parts of the state, people prefer to use the irrigation district water preferentially because it is cheaper to use than to pay the cost of pumping a well. In short, a supplemental water source is an overlapping water entitlement or right that is an insurance policy of sorts for when the usual supply of water is not available or insufficient to irrigate.

This might shed a little more light on my earlier comments about the Department not issuing overlapping water rights for the same source and same use/same place – If someone already has a full supply from the Snake River, obtaining a junior water right for the same land and same source is a right that can never be utilized because it would go out of priority before the preexisting right. However, we do issue overlapping rights from a different source (for example we issued rights to some of the folks in the HOA from the Snake River even though they had Wilder entitlements).

11) Does the entire HOA membership need to change POD? (Existing HOA permits?)

No. Only if they choose to. They can continue to use their existing pumps for Snake River water, and take Wilder water when available from the community tap. They may choose to add the HOA pump to their personal right if that makes things more convenient to always be able to use the tap (for example when there is still some Wilder water, but mostly everyone needs the Snake River water to get a full supply).

12) Can a member with an existing 2nd source (Snake River) use the HOA’s 2nd source?

This seems like a repeat of question 5 above. Maybe it is a little clearer now, but if the member adds the HOA pump as a point of diversion on their private right, they could take snake river water and wilder water from the common system, but technically, the snake river water would be pursuant to their personal right, not the HOA’s right.

13) Can a member maintain their permit from their Snake River permit if the HOA has a permit?

This seems to be a repeat of questions 3,4, and 7. The answer is yes because the HOA permit/water right is separate, distinct, and will not interact with existing rights/permits unless the existing right holder chooses to utilize the same delivery system – in which case, that user is still using their own water right and not the HOA’s water right as was, hopefully, made clear in my responses to questions 5,7,8,9,11, and 12.

From: Erik Heasley <riverfrontestates@yahoo.com>

Sent: Tuesday, September 19, 2023 2:13 PM

To: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Subject: Re: HOA questions from Riverfront estates

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

(Attachment #2)

Since our last meeting, I have had several discussions with the Dept. of Water Resources. The Dept has assured me there will be no negative impact on members or their existing rights. With that now documented, the only issue (I have) with the HOA moving forward to obtain water from the Snake River as a supplemental water right, is the cost associated with installing it and the financial impact on members.

I still do not feel comfortable with Brian Compton shelling out \$50-\$60k for this, but if he is happy than OK.

I propose:

1. The HOA will NOT incur ANY cost associated with the installation and maintenance of the system.
2. Participation is NOT mandatory. Participation is 100% voluntary.
3. Mr. Compton will provide:
 - a. Letter of intent to the HOA that includes his willingness to pay the entire cost associated with the installation of the supplemental water system.
 - b. Agrees to repair/replacement of any damage to HOA property.
 - c. Excludes the HOA from any financial responsibility regarding installation.
4. The HOA to pay the permit fees associated with adding the additional point of diversion to HOA members' current water right permits – Approx. \$200 per current permit holder @ 8 – 10 members, out of our existing funds.
5. Participating members agree to pay the additional annual cost associated with the supplemental water in addition to their annual dues.
 - Three months electricity for Main Pump, **estimated** at \$2100/yearly.
 - Three months electricity for Supplemental Pump **estimated** at \$900/yearly.
 - Future money for maintenance for pump, at an **estimated** \$500 per year.
 - \$3500/year @ 1 -23 lots = ATTACHMENT
6. Participation will be based on a yearly/seasonal basis, and members wishing to participate will indicate so in a form sent out prior to when the annual dues are due.

ESIMATED ANNUAL COST	PARTICIPATING MEMBER(LOTS)	ESTIMATED ADDITIONAL ANNUAL COST PER MEMBER
\$3,500.00	23	\$152.17
\$3,500.00	22	\$159.09
\$3,500.00	21	\$166.67
\$3,500.00	20	\$175.00
\$3,500.00	19	\$184.21
\$3,500.00	18	\$194.44
\$3,500.00	17	\$205.88
\$3,500.00	16	\$218.75
\$3,500.00	15	\$233.33
\$3,500.00	14	\$250.00
\$3,500.00	13	\$269.23
\$3,500.00	12	\$291.67
\$3,500.00	11	\$318.18
\$3,500.00	10	\$350.00
\$3,500.00	9	\$388.89
\$3,500.00	8	\$437.50
\$3,500.00	7	\$500.00
\$3,500.00	6	\$583.33
\$3,500.00	5	\$700.00
\$3,500.00	4	\$875.00
\$3,500.00	3	\$1,166.67
\$3,500.00	2	\$1,750.00
\$3,500.00	1	\$3,500.00