Original

SUMMARY: An ordinance requiring that water rights and water supply delivery or substitute compensation, at fair market value, to be dedicated to the District prior to provision of water service for any development.

BILL NO. 2010-01
LINCOLN COUNTY WATER DISTRICT
ORDINANCE NO. 2010-01

TITLE: AN ORDINANCE TO ESTABLISH THE DEDICATION OF WATER RIGHTS AND FACILITIES TO DELIVER WATER OR SUBSTITUTE COMPENSATION TO LINCOLN COUNTY WATER DISTRICT FOR NEW WATER SERVICE.

WHEREAS, the Lincoln County Water District ("District") was created through legislation in 2003 (Chapter 474, Statutes of Nevada, page 2985); and

WHEREAS, Lincoln County Water District Board ("District Board") has the authority, through this legislation under Section 11, Subsection 8, to adopt ordinances, rules, regulations, and by-laws, necessary for the exercise of the powers and conduct the affairs of the District; and

WHEREAS, the District Board desires to see growth and development pay for itself.; and

WHEREAS, the District Board desires to establish procedures in which to obtain a "will serve commitment" from the District where an applicant needing water service inside the District service area shall dedicate water rights to the District that are reasonably necessary to insure an adequate water supply to the subject property as a condition precedent to receiving a will serve commitment for water service from the District; and

WHEREAS, the District has developed and/or obtained water rights for use within Lincoln County; and

WHEREAS, the District Board also desires to establish procedures and guidelines for an applicant to obtain a "will serve commitment" from the District through purchasing available water rights from the District at a fair market value; and

WHEREAS, the District Board desires to also establish requirements and procedures for an applicant needing water service from the District to dedicate any facilities for water treatment, supply, storage, transmission and distribution, treatment and disposal, and appurtenances (such as wells, pipelines, pumps, storage tanks, etc.) which are reasonably necessary to insure adequate water supply to the applicant's property over to the District as a condition of receiving a will serve commitment for water service OR in the alternative to compensate the District for the cost of such facilities as a condition for receiving a will serve commitment for water service.

NOW THEREFORE, THE LINCOLN COUNTY WATER DISTRICT BOARD DOES HEREBY ORDAIN

1. To adopt Ordinance 2010-01 as follows:

1. DEFINITIONS: AS USED IN THIS ORDINANCE

1.1 Applicant means a person, company, corporation, LLC, government agency, or entity which has requested water service from the District for development.

1.2 Approval of a Development means approval by the District Board of a proposed development.

1.3 Dedication of Facilities means to transfer ownership of facilities to the District within and/or outside of the development.

1.4 Dedication of Water Rights means to transfer water rights by deed to the District together with an Abstract of Title and a report of Conveyance on the required form of the Nevada State Engineer's office sufficient to transfer title to the water rights being dedicated to the District.

1.5 Dedicated Water Rights means water rights that have been dedicated to the District to serve a development by dedication or payment of the fair market value thereof.

1.6 Developer means any person, company, corporation, LLC or government agency, or entity that is the proponent of a development.

1.7 Development(s) means any improvement, subdivision, land division, parcel map, housing project, municipal, commercial, or industrial project that will utilize municipal water. Development does not include a single family residence applying for a domestic well.

1.8 District means the Lincoln County Water District created by section 10 Chapter 474 Statutes of Nevada 2003.

1.9 District Board means the governing board of the District.

1.10 Domestic Well means a well for personal culinary use as defined under NRS 534.013.

1.11 Facilities includes, physical facilities within and/or outside of a development, including but not limited to wells, casings, pumps, pipes, motors, related electrical installments, valves, fittings, water treatment installations and easements, structural buildings and property.

1.12 State Engineer means the Nevada State Engineer, in the Division of Water Resources, Department of Conservation and Natural Resources of the State of Nevada.

1.13 Water Rights means surface or groundwater rights available to serve a development as recognized as valid water rights by the State Engineer either as permitted (certificated or uncertificated) or as adjudicated vested rights, in good standing on the records of the State Engineer, free and clear of encumbrances (except for conditions, acceptable to the District Board, of the permit or the decree in the case of vested rights) or claims of others, the place of use of which is capable of being transferred to the Districts service territory and the manner of use of which is capable of being changed to municipal, and if necessary for the District's use, the point(s) of diversion of which is (are) capable of being changed.

1.14 Will Serve Commitment means a letter, agreement or document stating that the District will provide water service to a developer for development. This will be done after District Board's approval, based upon the conditions set forth in section 8.

2. Dedication of Water Rights

2.1 Any applicant desiring water service from the District for a development must dedicate to the District the amount of water rights determined pursuant to section 4 of this Ordinance. The District shall have the right to reject any offered water rights, if the offered water rights are not capable of economic use by the District.

2.2 After dedication of water rights, the District's "will serve" commitment for water service shall be conditioned on the necessary change applications (as to manner and place of use and point of diversion, if applicable) being filed with and approved by the State Engineer in a final order, not subject to appeals. The water right must be in good standing. The District will request proof of use within the proceeding five (5) years and may refuse to accept a water right not so utilized. All costs of transfer of any point of diversion, or changes in manner or place of use shall be the responsibility of the applicant.

2.3 After dedication of water rights, or in the case of payment in lieu of dedication after receipt of the funds, the District's obligation to serve the proposed development shall be further conditioned on dedication of facilities, if required by the provisions of this Ordinance.

2.4 Any person or individual seeking a domestic well for use with a single family residence is exempt from this Ordinance.

2.5 This Ordinance does not apply to any request(s) for water service to an existing water service provider within its established service territory. Current water service providers are, namely Alamo Sewer and Water General Improvement District, City of Caliente, Coyote Springs-Lincoln County Consolidated General Improvement District, Panaca Farmstead and/or Pioche Public Utility. The Board will consider future exemptions if and when additional water providers are permitted within the District's service territory.

3. Dedication of Facilities and Payment for Facilities

3.1 An applicant shall, as a condition to the District's "will serve" commitment to development, dedicate the facilities necessary to deliver the dedicated water rights to the development and/or distribution through the development. The facilities needed will be determined by the District for supply, storage, transmission and distribution, treatment and disposal, and appurtenances (such as wells, pipelines, pumps, and storage tanks and subsequent buildings), located within or outside of the property which are reasonably necessary to insure an adequate water supply to the development. The applicant will also be responsible for all costs for easement or legal access reasonably necessary to insure an adequate water supply to the development. If the District requests or requires sizing of the facilities beyond what is necessary to deliver the dedicated water rights from the applicant, then the applicant may be entitled to reimbursement for the additional costs the applicant may incur for increasing the size of the facilities beyond what is necessary. Any increased sizing of facilities and/or reimbursement must be done by agreement between the District and the applicant.

3.2 In the event the applicant does not own or control all of the Facilities necessary to deliver the water represented by the Water Rights to a usable point within the District's distribution system, the applicant shall as a condition to the District's "will serve" commitment to serve the proposed development, pay to the District the cost of all necessary facilities not dedicated to the District. The cost shall be estimated by the District. After construction has been completed, the actual cost shall be compared with District's estimated cost and if the estimated cost payment exceeds the actual cost the District shall refund the difference to the applicant. Conversely, if the actual cost is greater than the estimated cost, the applicant shall pay the difference to the District. Any refund or differential payments shall be made within 90 days of completion of the Facilities for which payment was made.

3.3 The estimated costs shall include the cost of preparation of plans of the facilities if the applicant has not furnished completed plans to the District. All plans of proposed facilities shall conform to the District's standards and shall be approved by the District Board if such plans have been prepared by or at the request of the applicant.

3.4 The facilities which are the subject of a dedication agreement must be designed and constructed in accordance with standards and other requirements recommended by the District as a condition of a "will serve" commitment from the District. Standards and other requirements shall include planning studies and checking, design review, inspections, system testing and other matters designated by the District unless otherwise waived by the District Board.

3.5 All costs of distribution facilities within a development shall be the responsibility of the developer.

4. Amount of Water Rights and Facilities

4.1 The District Board shall, subject to the approval of the District Board, develop written criteria and pursuant to those criteria, determine the amount of water rights and facilities needed or substitute compensation necessary for development. Lack of criteria may not be cause for delay of approval of projects.

4.2 The District Board reserves the right to adjust and modify the amount of water rights required for dedication from time to time.

4.3 The District may provide wholesale water that has been dedicated for use in a designated area of development on a contract basis. In such cases, the amount of water rights required for development will be determined by the water purveyor operating within the development area.

5. Use of Water Rights and Facilities

5.1 The general manager may, subject to District Board approval, by contract or written agreement, permit the use of the dedicated water rights and/or facilities by other government entities, public or private utilities, or any other person or entity, including those engaged in providing water, storm drainage or sewer service.

5.2 The dedicated water rights and the dedicated facilities may be used by the District in performance of its obligations to serve the municipal needs of its customers wherever they may be lawfully served and the Applicant dedicating such water rights or facilities only has right to be served and does not have any claim on water from the dedicated water rights nor does such applicant or the proposed development have any claim on the dedicated facilities.

6. Development Costs and Fees

6.1 All costs of water distribution facilities within a development, including all meters and connections to the Districts closest water main shall be paid by the developer.

6.2 The District reserves the right to establish other fees as necessary to be able to maintain, operate, and support its facilities and distribution system.

7. Payment in Lieu of Dedication

7.1 The primary purpose of the underlying ordinance is to provide for future water supply, and in this regard dedication of water rights is strongly encouraged. In many instances it is recognized that dedication of actual water rights may be disproportionately burdensome, impracticable, or otherwise inconsistent with a water rights holder's long term plans for use of his or her property including his or her water rights. As an alternative to dedication of water rights, an applicant desiring water service for a

development may, if the District Board deems water to be available, pay the District fair market value of the amount of water rights requested by the applicant and approved by the District to serve proposed development. Fair market value will be determined by negotiations between the applicant and the District.

7.2 In the event an applicant elects to pay a fee in lieu of the dedication of actual water rights, the fee shall be the combined sum of the fair market value of the water right plus the cost of preparing and filing record of conveyance of ownership and applications to change point of diversions, place of use and manner of use under Chapter 533 of the Nevada Revised Statutes as determined by the District staff such that the fee paid in lieu of actual dedication of water rights is not less than the value of water rights and required costs as if actual dedication of water rights has occurred.

7.3 The District's Board reserves the right to require an appraisal or other suitable means of determining such value at the applicants costs.

8. Approval of Service Conditions

8.1. Every "Will Serve" notification and District's Board approval for water service is conditioned upon 1) acceptance of the dedication by the District's Board, 2) payment of substitute compensation, 3) the execution of an agreement conforming to this Ordinance. Any application or renewal, including applications for extension of "will serve" commitments made subsequent to adoption of this ordinance is subject to the provisions herein.

9. SEVERABILITY

9.1 If any provision of this ordinance or amendments thereto, or the application thereof to any person, thing or circumstances is held to be invalid, such invalidity shall not affect the validity or provisions or applications of the ordinance or amendments thereto which can be given without the invalid provisions or applications, and to this end, the provisions of this ordinance and any amendments thereto are declared severable.

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10. CONSTITUTIONALITY

10.1 If any section, clause or phrase of this ordinance shall be declared unconstitutional by a court of competent jurisdiction, the remaining provisions of this ordinance shall remain in full force and effect.

11. EFFECTIVE DATE:

November 22, 2010

Proposed on the day of , 2010.

Passed on the 22 day of November, 2010

VOTE

AYES: Commissioner(s) _____

Paul Mathews

E Edwards Jr

William T Lloyd

George T. Rowe

NAYES: Commissioner(s) _____

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ABSTAIN: Commisioner(s) _____

ABSENT: Commissioner Ronda Hornbeck

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RONDA HORNBECK, CHAIRPERSON

ATTEST: Wade Roncher

General Manager