

6/22/2012

J. Rodney Dansie
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To: Melanie A. Reif
Administrative Law Judge
Utah Public Service Commission
160 East 300 South
Salt Lake City, Utah 84111

Re: Docket No. 11-2195-01 Order to show cause hearing May 15, 2012

Judge Reif

Enclosed is a Recorded and Certified copy of the Right of Way agreement Dated February, 15, 1973 and a copy of the Agreement referenced as HC00005551 between Hi-Country Estates, Inc. and Larry H. Beagley and Ester D. Beagley called Owners of a 40 acre tract of land adjoining Hi-Country Estates .

This agreement requires the owners of the 40 tract and 6 lots to become members of Hi-Country Estates Home owners Association and Hi-Country agrees to sell Owners (6) water connections upon payment of \$500.00 per connection or hook up. The owners agree to pay for the use of water in accordance with the bylaws and schedules of payment established from time to time by Hi-Country Estates water Company. (Copy of Agreement attached as Exhibit # 1) See Paragraph #4 Page 2.

In addition enclosed is a copy of Amended Agreement (HC000556) see page 1 Paragraph E and G regarding the February 15, 1973 agreement . Exhibit 2

The Hi-Country Water system was developed by Gerald Bagley and two associates in the early 1970 s and the Hi-Country water system served three areas or subdivisions (1) Hi-country Estates Phase 1 (2) Beagley Acres subdivision and (3) South Oquirrh Subdivision and all were members of the Hi-Country Home owners Association and served by Hi-Country water co. a stock mutual water company with membership and voting rights. The Water Right 59-1608 and water tanks and lines and facilities served all three of the subdivisions and were approved by the Salt Lake County board of Health at the time the subdivisions were approved. The water agreements were for perpetual water service to the subdivision lots.

APR 17 1973 1:01 p.m.
Backman Abstract & Title Company
Fees Paid
3.88 By Deputy

2532611


RIGHT OF WAY

Hi-Country Estates, Inc., a Utah corporation, Grantor, hereby grants and conveys to Melvin J. Bagley and Barbara Bagley, his wife, Gerald H. Bagley and June L. Bagley, his wife, and Larry E. Beagley and Esther D. Beagley, his wife, Grantees, and their successors and assigns, for the sum of \$10.00 and other good and valuable consideration, a non-exclusive right of way for ingress and egress to the property presently owned by Grantees to the South and East of the property owned by Grantor, over the property owned by Grantor, situated in Salt Lake County, State of Utah, and described as follows:

Proof Read The roads of Hi-Country Estates as shown on the Plat of Hi-Country Estates Subdivision recorded on January 17, 1972, in Book KK, Pages 56, 57, 58 and 59, Entry No. 2432347, in the office of the Salt Lake County Recorder.

This right of way is granted in accordance with and subject to the covenants and agreements contained in that certain agreement entered into between the parties on the 15th day of February, 1973.

IN WITNESS WHEREOF, the Grantor has hereunder caused the name of its duly authorized officer or agent to be signed, this 15th day of February, 1973.

HI-COUNTRY ESTATES, INC.
By: 

STATE OF UTAH)
) ss.
County of Salt Lake)

On the 15th day of February, 1973, personally appeared before me Charles E. Lewton known to me to be the President of Hi-Country Estates, Inc., a Utah corporation, who duly acknowledged to me that he executed the foregoing instrument on behalf of said corporation by authority duly granted by its

EVERETT E. DAHL
ATTORNEY AT LAW
750 EAST CENTER STREET
(SUITE 2)
MIDVALE, UTAH 84047

BOOK 3304 PAGE 34

Board of Directors.

Edward Hall
NOTARY PUBLIC

My Commission expires:

Sept 3, 1973

Residing at:

Midvale, Utah

no fee

BOOK 3334 PAGE 35

5. Stephen Olschewski located on a lot in Beagley subdivision and agreeded to become a member of Hi-Country HOA and take water subject to the water agreement in the Feb. 15, 1973 recorded agreement.

6. Marcus Olschewski is located in the Beagley subdivision and agreeded to become a member of Hi-Country HOA and take water subject to the water agreement in the Feb 15, 1973 recorded agreement .

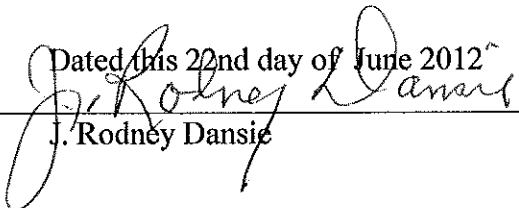
7. Helmut Olschewski is located in Beagley Subdivision and agreeded to become a member of the Hi-Country HOA and take water subject to the water agreement in the Feb 15, 1973 recorded agreement.

8. Rodney Dansie has requested water connections as per the 1977 well lease and water line extension agreement and the 1985 amendment to the well lease and the July 29, 2011 and the November 28, 2011 order from the Utah Court of appeals regarding the rights and obligations of HI-Country Home Owners Association under the well lease agreement. See copy of the Court decision attached as Exhibit # 4 No membership is require to provide this water as it by a contract that runs with the water system as ordered by the District Court and affirmed by the Utah court of appeals.

Based on the above information and documents submitted at the order to show cause hearing it appears that further investigation by the Division of Public Utilities is necessary to get all of the facts in this matter before a Recommendation can be made to the P, S. C. The Salt Lake County Recorders office reviewed the Recorded and Certified copy of the Right of Way and Water agreement and deemed it to be properly recorded as to notice to the world of the requirements of the lot owners of Beagley subdivision to become members of the association and take water subject Hi-Country Water service agreement as members of the Association

Conclusion

It is hereby requested that the Divisions of Public Utilities continue to investigate the members and membership requirements until all of the facts can be established to determine if the Letter of Exemption should continued.

Dated this 22nd day of June 2012~


J. Rodney Dansie

Also enclosed are two plat maps (1) Hi-Country Phase one subdivision plat (2) Beagley Subdivision showing 6 lots referenced in the Recorded and Certified Right of Way and Water agreement Dated February 15, 1973. All of the lots in the Beagley subdivision take water based on there agreement to be members of the association or by the water agreements they signed with Hi-country water referenced in the recorded February 15, 1973 agreements as water customers of Hi-Country Water Company. The following is an explanation of each of the 8 people receiving water from the Hi-Country Estates Home Owners Association and there member ship and voting or contract rights.

1.B. L. M. Wild Horse Center Started receiving water by a lease agreement in about 1994. The B. L. M. leased a plot of land to Hi-Country Phase one HOA for two water tanks and were exempted from membership because they were a Government Agency and took there water by Contract approved by the P. S. C. at the time Hi-Country was granted a CPCN # 2737.

Copys of the contract with the B. L. M. for water and lease of the tank site has been requested two times by the DPUs. And has not yet been provided. Mr. Crane testified under oath that he was aware of the lease agreement and yet Mr. Crane and Mr. Smith have failed to provide the agreement to the DPU.

The B. L. M. has since closed the wild horse property and have no plans to bring back any animals and if water is used it will very small amount. The Water is Served by Contract and does not require membership and voting rights in the Association. It is provided by approved Contract.

2. Greg Dehann The address listed at 7575 w Rooster Cove is not the address that is receiving water from the Hi-Country Water system. A lot referred to as the Bob Hymas lot located just east of Lot 1 Hi-Country Estates is receiving water from Hi-Country Water system on 7550 West. The water service at this lot was approved by the P. S. C. at the time of connection in about 1986 and is served by contract not requiring membership and voting rights. However, this lot has since been Annexed into Herriman City municipal boundaries and cannot be served by a Public Utility as it is in a municipal service area. It appears that the Water service should be changed to Herriman City based on the Annexation agreement that was signed by Mr. Greg Dehann when the property was Annexed into Herriman City about 2 years ago.

3.Larry and Ester Beagley are in Beagley subdivision and agreed to be come members of the Hi-Country HOA and take water subject to the water agreement in the Feb 15, 1973 recorded agreement.

4.Jonathan Beagley located in Beagley subdivision and agreed to become a member of Hi-Country HOA ant take water subject to the water agreement in the Feb. 15 1973 recorded agreement.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing certified copy of the recorded documents and exhibits and comments were served on the following on June 25,2012 as follows:

Vis U. S. mail to:

Dennis Miller – Legal Assistant
Division of Public Utilities
Heber M. Wells Building 4th floor
160 E. 300 S. Box 146751`
Salt lake City, Utah 84114-6751

Patricia Schmid at the above address for Division of Utilities

Saunna Benvegnu-Springer at the above address for Division of Utilities

J. Craig Smith
Smith Hartvigsen, PLLC
Walker Center
175 South Main Street Suite 300
Salt Lake City, Utah 84111

Melanie A. Reif
Administrative Law Judge
Utah Public Service Commission of Utah
160 East 300 South 4th floor
Salt Lake City, Utah 84111

Exhibit 1

Agreement

dated 10th day of October
1972

ACREEMENT

THIS AGREEMENT made and entered into by and between HI-COUNTRY ESTATES, INC., a Utah corporation, hereinafter called "Hi-Country" and GERALD H. BAGLEY, LARRY L. BEAGLEY and ESTHER D. BEAGLEY, his wife, hereinafter called "Owners".

WITNESSETH:

WHEREAS, Hi-Country has and is developing a land development under the name and style of Hi-Country Estates; and,

WHEREAS, as part of the development has acquired certain water rights and has installed a water system in connection with the development; and,

WHEREAS, Owners own a forty (40) acre tract of ground adjoining Hi-Country Estates; and,

WHEREAS, the Owners are desirous of being served with culinary water and to obtain a right to traverse certain of the private roads of Hi-Country Estates in order to reach and serve property owned by the Owners;
and,

WHEREAS, Beagleys are purchasing the property of Owners under a Real Estate Contract from: Gerald H. Bagley; and,

WHEREAS, Hi-Country is willing to allow access to the property of Owners and to furnish water connections under certain conditions.

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements hereinafter contained, it is agreed as follows:

1. Owners represent that they own the following described real property located in Salt Lake County, State of Utah:

Southwest quarter of the Southeast quarter of Section 4
Township 4 South, Range 2 West, Salt Lake Base and Meridian.

HC000549

2. Hi-Country grants to the Owners and their assigns the right to use the roads of Hi-Country Estates for means of ingress and egress to Owners property.

3. Hi-Country agrees to sell to Owners six (6) water connection hookups to be used on owners property upon payment of Five Hundred Dollars (\$500.00) for each connection or hookup. Owners upon paying for the connection fee agrees thereafter to pay for the use of water in accordance with the bylaws and schedules of payment established from time- to- time by Hi-Country Estates Water Company.

4. Owners agree that they will become members of Hi-Country Estates Homeowners Association and pay their proportionate share of costs for maintenance of roads and services rendered by Hi-Country Estates Homeowners Association in accordance with the Articles of Incorporation and bylaws of said association.

5. Owners agree at their sole expense to install a water line from the border line of Hi-Country Estates through the property of the Owners to the South boundary of Owners property and to the North edge of Hi-Country boundary. Owners agree to grant to Hi-Country a nonexclusive right of way and easement fifty (50) feet wide running South from the North edge of Owners property to the South edge of property together with the right to install utilities under the road. Said six (6) inch water line to be installed by Owners shall be within the aforesaid right of way. The water line shall be constructed and laid in accordance with the Salt Lake County water conservatory standards and upon completion, title to the water line shall vest in Hi-Country.

6. The location of rights of ingress and egress, location of easements and water lines, will be located as per the attached sketch. Said sketch being made part of this Agreement by reference.

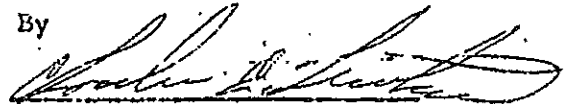
7. The parties are then required to execute all legal documents necessary to fulfill and perform the terms of this Agreement.

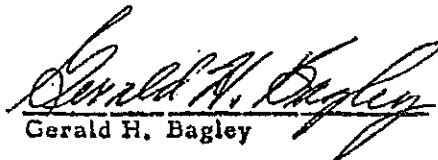
8. In the event of default by either party, the defaulting party agrees to pay all costs of enforcing this Agreement including a reasonable attorney's fee.

IN WITNESS WHEREOF, the parties hereto have signed their names on this 10 day of OCTOBER, 1972.

HI-COUNTRY ESTATES, INC.

By




Gerald H. Bagley


Larry E. Beagley

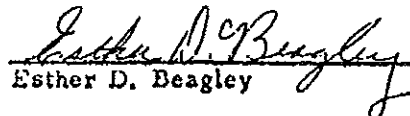

Esther D. Beagley

Exhibit ~~2~~

Amended Agreement
HC 000556

AMENDED AGREEMENT

It is hereby agreed, by and between Hi-Country Estates Homeowners Association Phase 1, hereafter referred to as Homeowners and Larry E. Beagley, his wife Esther D. Beagley, Helmet Olschewski, his wife , Steven Olschewski, his wife , and any others who may own part of described property. Hereafter referred to as Landowners

Whereas, the Homeowners are comprised of property owners of Hi-Country Estates Subdivision Phase 1. Said subdivision plat described and recorded in the office of the Salt Lake County Recorder

The plat of Hi-Country Estates Subdivision Phase 1. Recorded on January 17 1972 , in Book KK, Pages 56, 57, 58, and 59, Entry number 2432347.

Whereas, The landowners are adjoining property owners to the Hi- Country Estates Phase 1 Subdivision, and are interested in development of there land as described in the following;

Beginning at the South Quarter Corner of Section 4, Township 4 South Range 2 West, thense North 1320 ft., thense East 1320 ft., thense South 1320 ft., thense West 1320 ft. to the place of beginning. Consisting of 40 acres.

Whereas, The Landowners have a Right of Way of ingress and egress over the roads of the Homeowners, granted to them by HI- Country Inc. and recorded in the Salt Lake County Recorders Office, Book 3304, Page 034, Entry 2532831, and in accordance with and subject to the covenants and agreements entered into between the parties on 15 February 1973.

Whereas, It is in the best interest of both parties to make an amended agreement regarding the preservation of the Homeowners' property and the Landowner' rights of engress and ingress. Therefore;

IT IS HEREBY AGREED

(A) Each of the Landowners agree to pay to the Homeowners Association an annual assessment or such spiecal assessments levied. Said assessments to be equal to, but not more than the assessments to the members of the Homeowners Association. Said assessments is to be assessed by number of lots, or number of families, which ever is the larger. The payment of the assessment by each of the Landowners is not for membership in the Association, but only for rights of ingress and egress over the roads. The Landowners further agree to abide by the road rules of Hi-Country, for as long as they use the roads

(B) The landowners further agree to keep the Homeowners informed of any changes in the number of lots or families to be assessed.

(C) If the Landowners develop an alternate access to their land, and which access would no longer require the use of the roads of Hi-Country Estates Subdivision. The Landowners will forfeit thier right of way over the roads of Hi-Country. With the forfeiture of the use of the roads. The Landowners obligation to pay future assessments would cease. Assessments are to run from Jan 1 to Dec 31.

If the Landowners wish to terminate this agreement, notification must be done in writing before Jan 1. The request will then be presented to the Homeowners at the February 28, general meeting. *for a Vote*

(D) The Landowners shall not be bound by any other rules and regulations of Hi- Country Homeowners Association. The Landowners shall not be bound by any restrictive covenants running with the land of Hi-Country Estates Homeowners Association, except for those stated by agreements. Hi-Country Estates Phase 1 must retain the right of way, easement and etc. for the repairs of water lines and etc.

(E) The Landowners will, in accordance with the February 15 1973 agreement, dedicate and deed to the Hi-Country Estate Homeowner Association Phase 1, all Water Lines, Hydrants and Etc.

(F) Be it further noted that the Landowners will control and be responsible for the prevention of other private vehicles, animals, and etc., which may enter Hi-Country over or from the Landowners property

(G) This agreement is an amendment to and does not nullify that February 15, 1973 agreement between the previous Landowners and Hi-Country Inc., The developers. This agreement is between the Land owners and the Homeowners.

(H) Any changes or modifications of this agreement will be in writing and signed by both parties.

Dated this day of 19

Hi-Country Estate Homeowners Association Phase /