



Consider Irrigation Before Approving Subdivisions

By Kara Brighton

The issue of subdivision development in Wyoming has garnered much attention of late, with the focus being on the variety of impacts that such development can cause. The impacts to irrigation districts are often overlooked, despite the fact that the subdivision of lands within their boundaries is not only disruptive, but creates numerous managerial problems. While the irrigation districts that we represent fully recognize the importance of protecting the private property rights of the landowners, they also want to ensure that they can continue to deliver water to their users in both a cost-effective and timely manner.

Many irrigation district boards now devote at least a portion of their monthly meeting to discussing subdivision proposals within their boundaries. While every subdivision proposal must be analyzed on its own merits, there are three primary issues that irrigation districts face when lands are changed from irrigation to rural residential development: (1) dealing with the attached water rights; (2) easements for irrigation facilities, including access roads; and (3) liability concerns.

Attached Water Rights

W.S. § 18-5-306(xi) requires a subdivider to choose between three options to deal with the water rights attached to the property: (1) voluntary abandonment (relinquish or detach), (2) transfer to other lands, or (3) construction of a water distribution system that is capable of serving all lots. Although the irrigation districts do not typically have a preference as to which option the subdivider selects, there is, unfortunately, an inconsistency in the timing related to obtaining a subdivision permit and the timing for properly addressing the water rights. It typically takes more time to implement one of the foregoing statutory options than it takes to issue a subdivision permit. Consequently, subdivision permits are often conditionally granted, with the "understanding" that the water rights will be dealt with at some unknown point in the future. Follow-up may be sketchy and the water rights may never be properly dealt with to reflect the new use of the property. At that point various problems arise, including the fact that the irrigation district may be left with a slug of new members, all of whom are required to pay assessments, but many of whom are unable to access water because the facilities are not designed to serve small individual lots.

When properly applied, the statutory options result in no operational change for an irrigation district as to the parcel of property being divided. Most counties, however, have exempted "simple subdivisions" from the minimum statutory subdivision requirements, including the requirements for dealing with the water rights. When this occurs, an irrigation district is unable to protect prospective purchasers of the subdivided lots, or to ensure that district management and operations are not significantly burdened by the change in land use. It has been our experience that the great majority of subdivision applications fall into the "simple subdivision" category.

Easements

Another major issue that irrigation districts deal with when lands are being subdivided is the protection of historic easements for access to their irrigation facilities for operation and maintenance. While many of these easements may be unrecorded in the

county land records, they are fully recognized and enforceable pursuant to federal and state common law. The irrigation districts often prefer to obtain a recorded easement from the subdivider prior to the subdivision of lands to protect historic access to their irrigation facilities. While some counties have been willing to require such written easements as a condition of granting the subdivision permit, there is no statutory requirement.

We have found that changes to the land use surrounding irrigation canals and other facilities tends to increase conflicts between landowners, as well as between landowners and irrigation districts. These conflicts require significant administrative time and complicate the historic operation of irrigation districts. Written easements may assist with minimizing or dealing with some of these conflicts.

Liability

The subdivision of historically irrigated lands that are adjacent to an irrigation district's canal or reservoir significantly increases the liability concerns for irrigation districts. In short, an increase in the number of people residing near these facilities increases the probability that someone may be injured. The property losses associated with a breach of a canal also increases as irrigated pasture is converted to expensive homes. Most irrigation districts have taken steps to minimize their exposure by prohibiting recreational use of their facilities and thereby limiting the risk of harm. Wyoming's "safety of dams" program also serves to limit an irrigation district's liability by providing for the inspection and rehabilitation of major facilities to ensure their structural integrity.

County Subdivision Management

Each county that we have worked in on these issues has struggled to balance private property rights with the impacts that the subdividing of lands can cause, including the impacts to irrigation districts. Each irrigation district has also struggled to find a uniform method for analyzing proposals to subdivide lands within their boundaries. Unfortunately, there does not appear to be a cookie-cutter approach to dealing with the various issues raised by subdivision applications.

Legislative Action

The Joint Agricultural Interim Committee was assigned the task of addressing impacts of subdivision development on irrigation districts. At the Committee's upcoming September 2008 meeting in Green River, the Interim Committee will consider draft legislation to do just that. The draft legislation does not alter the current statutory requirements in terms of options for addressing the attached water rights. Instead, the draft legislation proposes a conceptual change to the subdivision process.

If successful, the proposed legislation would change the timing and nature of involvement afforded to irrigation districts within the county subdivision process. For example, when a subdivider approaches a county planner related to a proposed development, one of the first steps would be to determine whether the lands are within the boundaries of an irrigation district. If so, the county planner would direct the subdivider to the manager of the appro-



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priate irrigation district. The intent being that the developer would sit down with the irrigation district manager to identify the issues that may arise if the subdivision proposal is approved by the county commission. The proposed legislation contemplates that the subdivider and the irrigation district work together to resolve issues related to water rights, easements or any other issues identified by the irrigation district. At that point, the subdivider would enter into an agreement with the irrigation district prior to submitting their subdivision application to the county planner. Once the issues identified above are addressed, the subdivision proposal could then proceed through the remainder of the county process.

We believe the proposed legislation is a step in the right direction, and will assist all parties involved to deal with subdivision applications related to lands located within the boundaries of irrigation districts. The subdivider will know up front what is required

in order to properly address the irrigation district's concerns, which will then result in a project that best protects prospective purchasers of the subdivided lots. The irrigation district will learn first hand about the project and be allowed to enforce the requirements that the subdivider must meet. The counties will no longer be shuttling subdivision applications and comments between subdividers and irrigation districts. Counties will instead be comfortable knowing that before an application is submitted to them, the issues related to the irrigation districts have been resolved.

While the impacts to irrigation districts from subdivision development are significant, we believe the proposed legislation will reduce the workload of county planners, produce better subdivision proposals and reduce the disruption to irrigation districts.

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