

From: Rob Wilson-Hoss [mailto:rob@hctc.com]
Sent: Monday, September 23, 2013 2:53 PM
To: UTC DL Records Center
Subject: Docket no UW-131386

RE: proposed rule change, jurisdiction over water companies, homeowners associations

Dear Commission:

I represent homeowners and condominium associations, and have for about 25 years. Over the years I have represented over 50 such associations at one time or another. I currently represent more than 25. Of these, most manage their own water systems, pursuant to the exception from UTC regulation that has been longstanding. I have never heard any complaints about management or administration of a client water system that were not appropriately addressed. Over time, many smaller systems choose for reasons of administrative burdens to transfer ownership and management of their systems to PUD #1, which has actively sought such transfers.

As to the associations that manage their own systems, they work extensively with the Department of Health with respect to issues of water quality, and manage their administration of their systems as part of their overall association management duties, subject to statutory and decisional requirements and limitations.

The proposed rule would conflict directly with the statutory scheme that applies to such associations, which, for example, requires budgets to be written and adopted by Boards of Directors, then submitted to members for ratification. *See, e.g.,* RCW 64.38.020(3). The proposed rules interfere with the statutory protections already in place; they interfere with the right of the association to make assessments in a variety of ways to fund their water systems; they eliminate the voice of individual members in the management and administration of the systems; they would constitute takings without compensation, unless the Commission is planning to fund compensation for each member; and they would impose an extreme administrative burden on small and large associations to comply with a whole host of regulations, although the burden will fall disproportionately on smaller associations.

Bluntly put, this is a proposal that would increase governmental interference in private affairs, increase the cost of compliance, and do so without addressing

any need that I can see requires addressing. It risks failure on constitutional grounds, and carries a potentially huge price tag for compensation.

Homeowners associations are part of a solution to housing needs that has been available for decades, and has increased in popularity over the years. As local and state governments fall behind in their abilities to deliver services, people are more and more attracted to a contract/covenant system that allows them to participate in private democracies that can provide services such as police, road and street improvements, parks, other recreation, water, and other otherwise typically governmental services and functions. The advantage of these private democracies is that they are responsive to the membership and allow for home buyers to choose particular developments that suit their needs and interests.

One of the features of homeowners associations is that they decide how to fund these systems by turning to a menu of options. There are general assessments, special assessments, user fees, and so on. An example is how these associations pay for their water systems. Homeowners associations pay for water systems in three ways, potentially. One is by general assessments, which often have costs built in for water facilities regardless of whether there is a hook up or not to a particular lot. Then there is the general water fee, for lots that have water availability (or however else the HOA wants to do it) which provides a free amount of water up to a certain base usage point. Sometimes that is in addition to the general assessment for water facilities, sometimes it is a replacement for it. Then there is the usage fee, which is for people who use water over and above the base usage point.

This is all part of the role HOAs play as quasi-governments. They provide services often provided by governments, on a private basis through private contracting/covenants. They pay for these services through a complicated calculation of the relationship of costs to interests. Even those without a water hook up have increased fair market values because of the availability of water, so they pay something for the facilities. Those who actually use a small amount of water pay for that use. Then water conservation is advanced by an increased fee for those who use more water than others. Sometimes these amounts are graduated, like income tax, so that the worst water wasters (in theory) pay a higher rate for the highest category of usage. The HOA board is in the only position to figure out and understand how charges should relate to the various interests of the lot owners.

The proposed rules would be the very first intrusion into HOA governance of this scope, and should be very carefully considered before being adopted. Again,

where are the complaints? And if there are complaints, is there any substance to them?

Thank you for considering my remarks.

Sincerely,

Robert Wilson-Hoss

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