

To: jo.beeman@beemanlaw.com
From: Bryce Contor <bcontor@if.uidaho.edu>
Subject: Basic American Foods Water Rights - Rexburg
Cc: kekeller@baf.com, bwright@baf.com, aruberry@idwr.state.id.us
Bcc:
Attached:

*BAF CORRECT MAINT
ADDRESS:*

Dear Ms. Beeman -

On Friday Keith Keller and Eric Eastin showed me the wells and facilities associated with the Basic American Foods water rights in Rexburg. I told Mr. Keller I'd send you a summary of what we found, with a copy to him.

1) A22-02204. This is for the main water supply for the plant. The original license is for one well in 6N 40E 19 NWNE. The original well is actually in NENE, the large well known as "Well A." There is a second well, "Well C," in the NWNE. Mr. Keller and Mr. Eastin had supposed that this well was the well claimed under A22-10008, but inspection of the claim and documentation suggest that A22-10008 is a well across the road to the north at a maintenance shop.

*No Permit Paid
Per 42-22926
Exempt 22500
90d*

Basic American Foods may wish to consider amending claim A22-02204 to show the correct location of the original well and to add Well C as an accomplished second point of diversion. It may also be well to amend the place of use to include both the NWNE and the NENE, as the plant actually overlaps the line between these two quarter-quarters. These differences in location appear to arise from better aerial photography that was not available to the licensing examiner, not to any change that has been made by Basic American Foods.

*When did the
changes to POB
and POB occur?*

The license does not specify an annual volume. I forgot to double-check my assumption (based on license 22-7391) that the plant operates 24 hours/day, 365 days/year. If Mr. Keller, Mr. Wright or Mr. Eastin could call Al Ruberry at 525-7161, or me at 681-9100, to confirm this, that would aid in making a correct recommendation.

OK

2) A22-04063. This is for the well at the former Meyers Brothers feedlot. About a year ago the well was capped and buried, in anticipation of moving it to a new location to allow for changing the irrigation system. Mr. Keller and Mr. Eastin are working on getting affidavits to establish priority and the capacity of diversion works. The water right is based on the original beneficial use for the feedlot. Since the feedlot is no longer in use, I expect Basic American Foods will want to transfer the water right to a different use, or resume using it for some other commercial purpose at the same location.

** Recommend as
claimed use Prior
to 1987.
SINCE WHEN?*

The claim lists only the SESW of 7N 40E 28 as the place of use, but the aerial photos clearly show that use also occurred in the NESW, the NWSE and the SWSE. Since this water right will likely be transferred to a different use in the future, it may not matter, but your clients might want to consider an amendment to include all four quarter-quarters. I did not discuss with Mr. Keller and Mr. Eastin that a future transfer will need to occur before the water right is forfeited for non-

*which photo?
what year?*

use.

3) A22-07391. This is for the boiler well, "Well B" at the main plant. The license and the physical connections allow it to be used within any part of the plant. As with A22-02204, the place of use and point of diversion are both listed as 6N 40E 19 NWNE. The well is actually in NENE and the place of use is in both NWNE and NENE. Basic American Foods may wish to consider an amended claim.

Since what year?

4) A22-10008. This is a beneficial use claim for the well known as the "Anderson Well," which serves a small maintenance shop across the road to the north of the plant. It is a beneficial use claim, but the claimed priority date and evidence of priority are after the statutory permit date of 1963. However, the use appears to be well within the 2,500 gallon per day de minimus non-residential domestic classification, which can be recommended with a post-1963 priority date without evidence of priority. If this is acceptable, no further action should be necessary. Otherwise, your clients may wish to amend the priority date on the claim and provide evidence of priority earlier than the mandatory permit date.

42-229 IC

*N/A
N/A*

*Recommend
under 42-111(e)*

Please call me at 681-9100 if you have questions. Today I will pass the files on to Mr. Ruberry at IDWR, who will be processing the actual recommendations for these water rights.

Sincerely, Bryce Contor
Subcontractor for IDWR Adjudication Bureau,
Eastern Regional Office

In

To: "Bryce Contor" <bcontor@if.uidaho.edu>
Cc: "Jo Beeman" <jo.beeman@beemanlaw.com>, <bwright@baf.com>
Subject: RE: Basic American Foods regarding 22-4063 and 22-10008 (Rexburg facility)

Bryce,

Thank you for the information. I will forward this to Jo Beeman with your telephone number.

Paralegal
Beeman & Associates, P.C.
409 W. Jefferson St.
Boise, Idaho 83702
208-331-0950
331-0954 - fax
office@beemanlaw.com

-----Original Message-----

From: Bryce Contor [mailto:bcontor@if.uidaho.edu]
Sent: Thursday, May 26, 2005 12:20 PM
To: B&A Office
Subject: Re: Basic American Foods regarding 22-4063 and 22-10008 (Rexburg facility)

Thanks for responding so quickly. I've just looked these up on the website, and the website has nothing that isn't in the paper file which I have in my possession. These are both beneficial use claims, which means they were developed outside the IDWR permit and licensing process. In order to recommend these to the SRBA court, IDWR needs to have adequate evidence of priority. Because the permit process became mandatory for ground water in 1963, the evidence needs to indicate that the beneficial use commenced before then.

There is no evidence of priority in the files, except for a well log in claim 22-10008 that appears to be dated 1978.

I have an appointment with the claimants tomorrow morning, to locate the wells and take down physical information such as location, pump size, etc. I will talk with them about the evidence of priority requirements but they will no doubt need guidance from Ms. Beeman in acquiring and preparing the information needed to allow IDWR to recommend these claims.

Please call me at 681 9100 if you have questions.

Thanks, Bryce.

At 12:08 PM 5/26/2005 -0600, you wrote:

Mr. Contor:

Bruce Wright of Basic American Foods indicated you required additional information for water claims 22-4063 and 22-10008 in connection with the Rexburg facility. The only documents we have in our files with regard to the two (2) referenced water claims are the same as on the IDWR database.

Please let us know if we can be of any other assistance.

Paralegal

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