

Jared's Wild Rose Ranch Resort
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RECEIVED
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DEPARTMENT OF
WATER RESOURCES

February 23, 2007

SRBA Court
P.O. Box 2707
Twin Falls, ID 83301
208-736-3011

Re: Wild Rose Ranch Water Rights #21-04130

Dear Sir or Madam:

Introduction

My name is Kevin Barney and I am the manager of the Wild Rose Ranch on Henry's Lake in Island Park, Idaho ("subject property"). A few days ago I received notice that I received a partial decree in the water right (#21-04130) for the subject property with a priority date of June 1, 1957 ("1957 priority date"). I immediately notified the present owner, McLloyd Barney ("Mr. Barney"), who is my father, of the priority date. Mr. Barney was outraged, because he possesses a deed for the subject property which indicates that William J. Bowers filed a water right on June 27, 1898 for the subject property.

Prior Notice Not Received by Manager or Owner of Subject Property

After speaking with Aaron of the Idaho Department of Water Resources ("IDWR") extensively, he informed me that I was required to object to this new priority date from an earlier mailer. I did not receive an earlier mailer. More importantly, Mr. Barney has not received any mailers in regard to the water rights of the subject property, which he currently owns.

Priority Date Should Not Be Changed Due to Continual Use of Water by Subject Property

In 2004, I spoke with Steve McCormick ("Mr. McCormick") about our water rights. Mr. McCormick attempted to explain what type of information I was to provide in order to maintain our water rights for the subject property. I understood from Mr. McCormick that I was to provide evidence of continual use of the water upon the subject property. Therefore, I submitted a letter describing how the subject property had continually used the water under the water rights filed by William J. Bowers.

In the letter to IDWR, based on Mr. McCormick's information, I provided the names of three people involved with the Wild Rose since the 1950's to show continual use. Patti Carkeek, and Dirk Buehler, in particular, signed the letter. Patti Carkeek, the daughter of C. Gil and Mae Day, resided on the subject property in the early 1950's during her parent's ownership. Dirk Buehler worked at the subject property in the late 1950's.

After the submission of my letter, I thought that I had been successful in providing evidence of continual use of the water on the subject property. However, the priority date for the subject property has now been changed to June 1, 1957 without my knowledge and more importantly, without Mr. Barney's knowledge, the current owner of subject property.

Further Evidence of Continual Use of Water by the Subject Property

Back in the 1890's, a large portion of property ("connected property") existed which has been since separated into three separate properties. Edith Boger ("Ms. Boger") owned the connected property in the 1940's. In the 1950's, Ms. Boger sold the Southern portion of her property to C. Gil and Mae Day, which is referred to herein as the subject property. C. Gil and Mae Day continued to run the subject property as a resort, and use the water for watering, guests, fish cleaning, etc. In the 1970's, C. Gil and Mae Day sold the subject property to J. Kent Jolley who continued to use the subject property as a fishing resort. J. Kent Jolley later sold the subject property to Mr. Barney in the 1980's, who continued to use the subject property as a fishing resort. As part of the sale, Mr. Barney assumed the original note payable to C. Gil and Mae Day until it was paid off in the late 90's. Mr. Barney has continued to use the water upon the subject property as did its prior owners.

In the 1960's Ms. Boger's health was failing. After living above the resort for a few more years, she sold one portion of her property to the Dietrich family in 1965, and willed the remaining portion of approximately 10 acres to Paul Walker after her death in 1966. Mr. Walker then sold his portion to the Dietrich family. Val Dietrich later sold the Walker portion to John Johnson in the late 80's, and eventually sold the remaining portion to Charles Kane in approximately 2000. As such, the Johnson family and Kane family own the remaining parcels that were originally owned by Ms. Boger.

McLloyd Barney has a direct line and showing of continued use of water after acquiring the subject property from C. Gil and Mae Day who used the subject property as it is currently being used by Mr. Barney. Before C. Gil and Mae Day, Ms. Boger used the subject property and its water. This is evidence of continued use prior to the June 1, 1957 date that has now been assigned to the subject property.

Further Investigation Reveals that Others Owning Parcels with Subject Property's Description have Earlier Priority Date than Subject Property

Through further investigation, I discovered that Charles Kane ("Mr. Kane"), one of our neighbors whose water right (#21-10019) emanates from the same source, had received a priority date of June 27, 1898 (Version 2). He had to file an objection, because his original water right had been forfeited. Mr. Kane was able to establish his originally priority date after hiring a lawyer, Daniel Beck, who had previously contacted me in order to obtain information about this water right. When Mr. Beck contacted me, I was not aware that our water right would also be assigned an improper priority date as had been done to Mr. Kane. It is important to note that Mr. Kane's water rights and the water rights on the subject property are the same original water right. Therefore, our original water right priority date should be restored to June 27, 1898 just as Mr. Kane's.

It is important to note in Mr. Kane's Objection (see IDWR web page), his warranty deed included the subject property or C. Gil and Mae Day's portion of Ms. Boger's property, which is now owned by Mr. Barney. Mr. Kane has been able to restore his original priority date, showing that there has been continual use by the subject property. In other words, *Mr. Kane used information from the subject property to evidence his continual water usage, causing his water right priority date to be restored to June 27, 1898. However, the subject property itself, which provided the evidence of Mr. Kane's continual water usage on his property, has a later priority date.* This is unacceptable and does not comport with the evidence proffered by myself and Mr. Kane. The priority date for the water rights on the subject property should be restored to June 27, 1898, as filed by William J. Bowers.

For your information, I am in possession of a letter from Paul Walker, which can also verify continual usage of water by the subject property and his warranty deed which refers to the original water right of William J. Bowers. All of the owners of the property separated from the original connected property owned by Ms. Boger can prove continual use. More importantly, the subject property has always been a resort open to the public, which has used the water for public use, as well as for watering and irrigation. Tax records can also be obtained to verify that the subject property has been open and operating since Ms. Boger's possession, which is additional evidence of continual usage by the subject property prior to June 1, 1957.

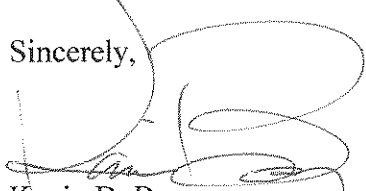
Conclusion

I formally object to the priority date of June 1, 1957 assigned to the subject property. I ask that you set aside the partial decree that establishes the June 1, 1957 priority date for the following reasons: 1) I was not given prior notice of the change in the water rights priority date, 2) Mr. Barney, the owner of the subject property was not given notice of the change in the water rights priority date, 3) Present owners have used the subject property's information to establish the original priority date as June 27, 1898 from William J. Bowers; and 4) the subject property has had obvious, open and continual use of the water since the original priority date. I further ask that any further court proceedings be stayed and that Mr. Barney be given notice of any further court proceedings, hearings and/or trials.

I am aware that time is of the essence, and for this reason, I am informing you of our intention to object and oppose the June 1, 1957 priority date. If this can be resolved without litigation, please let us know immediately. Mr. Barney is in the process of retaining an attorney to represent him on this matter so that his water rights may be preserved as they exist in the Warranty Deed he possesses on the subject property.

Please contact me at your earlier convenience. I may be reached at the number and address above. Mr. Barney may be reached by telephone at 702-870-6625 or 702-878-0355, or by mail at 6725 Barney Lane, Las Vegas, NV 89131. Thank you for your time and attention to this matter.

Sincerely,



Kevin D. Barney
Manager, Jared's Wild Rose Ranch Resort

cc: IDWR, Aaron
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