

Merritt, Allen

From: Jones, Doug
Sent: Tuesday, December 14, 1999 10:16 AM
To: Southern Region
Subject: RE: Domestic/Stockwater Uses With Split Ownership Under Sec. 42-111 I. C.

In reply to Jim's message on the first part. The individuals (Drakes) have a drafted claim that they need to submit to the court with the Motion to File Late Notice of Claim (SF-4), 36-15537. This electronic record resides on Host Temp, so casual reading with AJ5 will not work. A proof report is printed and will be in the cabinets; a copy of the draft claim is in my office file cabinet. I bring this up with respect to any communications with the feedlot owner and inquiries regarding the situation. The claim is for 2 homes, $\leq 1/2$ acre, 0.06 cfs, 1991 priority (date second home added to system), well drilled in 1988. The Drakes said the older home was hooked to a neighbor's well up to 1988. With respect to the feedlot owner's access to the well, it is my understanding that it was a verbal agreement. I begged off any input to whether they are in any way culpable (legality) for providing water to the feedlot, or responsible to provide water to him (contractual).

An application for permit or claim to a water right could be pursued by the feedlot owner (Martens) identifying the Drake's well as the PoD.

Funny (not) how these little things develop into hairballs.

Doug

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

From: Stanton, Jim
Sent: Tuesday, December 14, 1999 9:55 AM
To: Southern Region
Subject: Domestic/Stockwater Uses With Split Ownership Under Sec. 42-111 I. C.

Yesterday I got involved in a situation where an existing domestic well served 2 homes under single ownership. Although no claim was filed when I talked to the owners, there would be an old priority date for the original home. In 1988, they allowed a feedlot to hook onto the well in exchange for partial payment of the pumping costs by the feedlot owner. The feedlot is fairly small, so total usage probably does not exceed 13,000 gpd. However, 42-111 states that multiple-ownership subdivisions are not covered by this section. Phil Rassier felt that any multiple-ownership situation would be limited to 0.04 cfs AND 2500 gpd in order to be exempt from the filing requirements. Since the total usage on this system exceeds these limits, the feedlot owner must obtain a water right for his use of this well. The feedlot use would probably be exempt from the Snake River moratorium, so we could process a permit. Or the owner could just file an SRBA claim with a 1988 priority. The well owners are not required to file on their usage of the well. To be legal, the feedlot owner should have obtained a water permit BEFORE hooking up to this well.

A related situation would be the development of a multi-use domestic system under single ownership (such as 2 homes for a parent & married children) that later splits apart (parent dies, kids sell homesite with access to existing well). I did not discuss this with Phil, so am not sure how this fits in with the feedlot situation. But the safe way to go is for the buyers of the second home to obtain a permit for domestic use. The intent here was to maintain single ownership, but that changed when the parent departed. A system intended for multiple ownership ALWAYS needs a water right.

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