

Cefalo, James

From: Cefalo, James
Sent: Wednesday, September 8, 2021 12:59 PM
To: 'dennis@foxdaleproperties.com'; 'Rob Harris'; 'hansenk36@gmail.com'; 'hansenranchs@msn.com'; 'stoveman@silverstar.com'; 'hansen_brian@sbcglobal.net'; 'mrddc@hotmail.com'
Subject: Application for Transfer 84788 (Grouse Creek Reserve)
Attachments: Transfer Question; ASCC Daniels Creek.pdf

Dear Parties:

The following email chain includes an email sent to me by Rob Harris on August 24, 2021 (with the attached documents) and my response. At the time I responded to the email, I didn't realize that the email was related to a contested case where I was assigned as the hearing officer. This morning I discovered that the inquiry is associated with Application for Transfer 84788.

Rule 417 of the Department's Rules of Procedure (IDAPA 37.01.01) prohibits ex parte communications between parties (or their representatives) and the hearing officer about substantive issues in a contested case. In my opinion, the question of whether a transfer application is required to add points of injection and re-diversion is a substantive legal question. Pursuant to Rule 417, when a presiding officer becomes aware of an ex parte communication, the presiding officer must ensure that all of the parties receive a copy of the communication. This email is meant to notify the parties of the question posed by Rob Harris and my response.

James

 IDAHO DEPARTMENT OF
WATER RESOURCES
James Cefalo | Regional Manager
900 N Skyline Drive, Idaho Falls, ID 83402
(208) 525-7161 | www.idwr.idaho.gov

From: Cefalo, James
Sent: Tuesday, August 24, 2021 2:43 PM
To: 'Rob Harris' <rharris@holdenlegal.com>; Jordan, Blake <Blake.Jordan@idwr.idaho.gov>
Subject: RE: injections and rediversion

Rob,

It's not really a question of Department policy. Section 42-105 allows a water user to inject water into a natural waterway and reclaim the water at a downstream location. Section 42-105 does not state that the subject water right needs to include a point of injection and re-diversion. I think it is wise to describe the point of injection and re-diversion on the face of a water right to provide notice to other water users and to help local watermasters administer water rights. In the adjudication, the Department generally listed points of diversion and points of injection to help water users and watermasters understand the conveyance systems.

James

From: Rob Harris [<mailto:rharris@holdenlegal.com>]
Sent: Tuesday, August 24, 2021 2:00 PM
To: Cefalo, James <James.Cefalo@idwr.idaho.gov>; Jordan, Blake <Blake.Jordan@idwr.idaho.gov>
Subject: FW: injections and rediversion

James and Blake:

In conversations relating to a contested case, the question of whether a transfer is needed for a point of injection/rediversion is necessary was discussed. Based on prior direction from the Department, a transfer is necessary. See the below email correspondence from 2010 and the attached email with the original question. I disagreed with the Department's original position from 2010, but followed in in relation to the transfer I was involved in at the time.

I just became aware of the attached correspondence on another matter from 2015 where James indicated in a matter involving another dispute within the ASCC system that a change in point of injection/rediversion is does not require a transfer. Is this the current Department policy?

Thanks,



Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
1000 Riverwalk Drive, Suite 200
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Idaho Falls, ID 83405-0130
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From: Rob Harris <rharris@holdenlegal.com>
Sent: Monday, May 17, 2010 1:57 PM
To: Katie Salsbury <katie@intermountainaquatics.com>
Subject: FW: injections and rediversion

See the email below from IDWR.

Robert L. Harris
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From: Carlson, Dave [<mailto:Dave.Carlson@idwr.idaho.gov>]
Sent: Monday, May 17, 2010 12:35 PM
To: rharris@holdenlegal.com
Subject: FW: injections and redirection

From: Skaggs, Pam
Sent: Monday, May 17, 2010 12:01 PM
To: Carlson, Dave
Subject: RE: injections and redirection

Dave,

We recently had a customer discussing this issue with Nick Miller on his customer day. The end result is that they are all described as PODs of the right. Changing them can have effects on other users & the transfer process allows for review & public notice. So....yes.

Pam

From: Carlson, Dave
Sent: Monday, May 17, 2010 11:54 AM
To: Skaggs, Pam
Subject: injections and redirection

Pam

If you change an injection or redirection point do you need to file a transfer.

Im guessing yes

dc

!DSPAM:1090,4bf18c51250571209063522!