

Cefalo, James

From: Cefalo, James
Sent: Thursday, July 8, 2021 2:34 PM
To: 'Bar11ranch@hotmail.com'; 'Chris Bromley'; 'Candice McHugh';
'Whittaker2dot@gmail.com'; 'tomchak1@yahoo.com'; 'shanudy@yahoo.com';
'fjwhitt@yahoo.com'; 'bericsson@depatco.com'; 'Rob Harris';
'kipp@manwaringlaw.com'; 'Stevenjohnson01056@gmail.com'
Subject: Letter from Glenda McConnell
Attachments: 7-8-21 Letter from Glenda McConnell.pdf

Dear Parties,

The attached letter was sent to me by Glenda McConnell this morning. Even though exceptions have been filed with the Director, it is still possible that the contested case will be remanded (sent back to me) for further proceedings. Therefore, ex parte communications with the hearing officer are still prohibited. Consistent with Rule 417 of the Department's Rules of Procedure, I am notifying the parties of the letter and will respond to the letter through this email.

The letter asks why Whittaker has been allowed to divert from an unauthorized point of diversion while McConnell's lower diversion has been curtailed. The Preliminary Order states that that the hearing officer would defer to the Department's compliance bureau and Water District 74Z to decide how to address Whittaker's unauthorized diversion of Stroud Creek water. Questions or concerns about unauthorized diversions from Stroud Creek should be directed to the watermaster for Water District 74Z or Rob Whitney, the Water Distribution Section Manager for IDWR.

The letter also asks if McConnell's lower diversion can be used until the contested case is completely resolved in court. My order was issued as a preliminary order under Rule 730 of the Department's Rules of Procedure. A preliminary order is not effective until it becomes a final order. Rule 730 describes various ways for a preliminary order to become a final order. Currently, exceptions have been filed with the director. Rule 730.02.d describes the contested case process after exceptions have been filed.

Finally, the letter states a concern that Whittaker has not been assessed by Water District 74Z for the use of water right 74-157. This concern should be discussed with the watermaster and/or discussed at the annual meeting for Water District 74Z.

James Cefalo
Regional Manager
IDWR Eastern Region
(208) 525-7161

Dear Jame Cefalo

My name is Glenda McConnell. I am writing in the matter of the application for transfer 84441. The ranch that we have owned since 1993 had a previously unregistered point of diversion. The unrecorded point of diversion was identified in August of 2020, and the water from the second point of diversion was immediately shut off. Since that time the diversion has been fitted with lockable, measurable controls as required by law.

My question is, why is the enforcement of the rules being applied differently in this case? When our unauthorized diversion was identified, we immediately had our water shut off to the point of diversion. We immediately began to take the corrective measures required to have the second point of diversion. As you will notice in the findings dated May 18th, 2021 the Whittaker Two Dot Ranch has an unregistered diversion that was discovered in the process of the investigation of our petition. The Whitaker Two Dot Ranch has been allowed to continue to utilize their second diversion while our diversion was immediately shut off. It appears that the rules are being enforced inconsistently in our case.

I am asking why we cannot have the same allowance that is being made to the Whittaker Two Dot Ranch and allow us to continue to utilize the second diversion until the issue is completely resolved in court. I am assuming that since the unauthorized diversion is still being utilized by the Whittaker's this can also be the situation with ours. As you will see in the findings the unauthorized diversion on the Whitaker Two Dot Ranch is more than a mistake, it appears that it has violated the Stream Channel Protection Act. Along with these violations it does not appear that they have been billed for Right 157 yet have not had any repercussions for non-use. As long as they can continual using their water they can keep asking to review this case.

Glenda McConnell

208-768-2203

RECEIVED

JUL 08 2021

Department of Water Resources
Eastern Region

Cefalo, James

From: Glenda Montana <bar11ranch@hotmail.com>
Sent: Thursday, July 8, 2021 9:17 AM
To: Cefalo, James
Subject: 84441 Preliminary Order Approving Transfer & Transfer Approval.pdf
Attachments: Scanned document from HP ePrint user.eml

Sent from my LG Mobile