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January 15, 2021

Daniel A. Nelson
Water Right Analyst 3
Idaho Department of Water Resources
322 E Front Street
Boise, ID 83702
Via email to dan.nelson@idwr.gov

Re: North Kootenai Water and Sewer District –
IDWR's accounting spreadsheet for ground water rights with APODs.

Dear Dan:

In my letter to you of 12/4/2020, I promised that we would take a look at IDWR's water accounting spreadsheet for NKWSD and confirm to you that NKWSD can provide the data necessary to make that accounting work in the event of administration/regulation/curtailment of water rights. Thank you for providing me a copy of the accounting spreadsheet (dated 3/2016, version 12) on 1/11/2021 and for walking me through that spreadsheet on 1/12/2021 and again today.

You have emphasized to us that the spreadsheet assumes that all of NKWSD's ground water rights operate with system-wide APODs. That is not true today, of course. But we expect that to be the case soon (following a system-wide transfer). We appreciate that if system-wide APODs are not achieved prior to administration, some mechanism other than this spreadsheet will be used to administer NKWSD's water rights. Now that we have resolved all outstanding issues on the three pending licenses (Nos. 95-9129, 95-9244, and 95-10019) and resolved all protests on the RAFN application (No. 95-17608), we look forward to undertaking a system-wide transfer.

Let me turn now to a summary of how the accounting system works, as I understand it.

The spreadsheet's sole data input is a single daily number—total daily (system-wide) ground water diversions (in gallons). In other words, the spreadsheet operates based on the volume of daily diversions, not on rate. It is not necessary to provide data on diversions at individual wells.

The spreadsheet contains an on/off switch for each water right, which is set for each day. All water rights are set to “on” unless (1) the water right has been curtailed or (2) diversions under the water right have reached its authorized annual diversion volume, taking into account combined use conditions.¹

Each day's total diversion quantity is then allocated on a pro-rata basis to each water right that is turned “on” for that day. This pro-rata allocation is based on the relative authorized annual diversion volume for each water right compared to all others that are “on” at that time (taking into account combined use limits). In other words, the pro-rata allocation operates on annual authorized volume limits; it does not look to the remaining authorized volume for particular water rights at a given point in time.

In this way, each water right then in priority will take its pro-rata share of each day's total actual diversions. This allows the spreadsheet to track, on an on-going, cumulative basis, how much water has been diverted under each ground water right for the current calendar year, and compare that to the authorized annual volume (taking into account combined use limits). If NKWSD were to cut back on water diversions, the spreadsheet would recognize this, thus allowing its remaining supply to be “stretched out” for a longer period of time. The APODs will further facilitate these water management decisions by allowing water to be made available in some places on some days and in other places on other days.

If a water right reaches its maximum authorized annual diversion volume, the switch is re-set to “off” on the following day. So long as one or more ground water rights remain in priority, NKWSD may elect to divert up to the maximum combined diversion rate associated with those rights.

¹ All of NKWSD's ground water rights (except No. 95-12599) have annual volume limits. It probably makes sense to add an annual volume limit to that right when it is licensed.

If at some point during the calendar year, administration were to go into effect, the first step would be to fill in the daily diversion data for the current calendar year up to that day. The spreadsheet would then allocate that pre-curtailment usage to each water right on a pro-rata basis.²

In order for NKWSD to provide the necessary inputs, all that is required is daily total (system-wide) ground water diversion volumes. For purposes of administration, historical data would be required for the current calendar year only. Then, going forward, daily diversion totals would need to be provided to IDWR on a daily or other basis, as specified by IDWR.

Based on this understanding of the spreadsheet, NKWSD confirms to IDWR that it is capable of providing, and will provide, the data inputs as described above in the event of a curtailment.

As I mentioned on the phone today, some of the quantity limits in the spreadsheet are out of date. Specifically:

No. 95-7231 should be 16.8 AF, not 15.6 AF,
No. 95-9217 should be 1820 AF, not 1818 AF, and
No. 95-9129 should be 0.53 cfs, not 0.20 cfs.

And the effective volume for No. 95-12599 could change when that permit goes to license.

Let me conclude, once again, by thanking you and each of the members of IDWR's staff who have worked so hard over the years to help us through this process. We very much look forward to your continued cooperation, and pledge our cooperation as well.

² This works to NKWSD's disadvantage in the first year that any particular water right is curtailed. NKWSD would have preferred to allocate pre-curtailment diversions to its junior rights first in order to preserve as much volume as possible for its non-curtailed rights. IDWR recognized that ordinarily holders of multiple water rights serving a common system are allowed to choose which right to exercise. In our case, however, IDWR took the position, based on the fact that the APODs are relatively new, this would constitute an enlargement. (See 9/6/2016 memorandum from Shelley Keen to File, at page 2.) In order to resolve the impasse, NKWSD agreed to IDWR's approach. NKWSD reserves the right to renew the discussion at some point in future, particularly in light of changed circumstances. But for now and the foreseeable future, NKWSD acquiesces in the approach reflected in the spreadsheet.

Daniel A. Nelson
January 15, 2021
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Sincerely,



Christopher H. Meyer

cc: Shelley Keen, Doug Jones, Angela Grimm, Manuel Rauhut, and Craig Saxton,
IDWR
Jessie Camburn, District Manager, NKWSD
Suzanne Scheidt, Senior Compliance Specialist, NKWSD
Robin Potts, Office Supervisor, NKWSD
Necia Maiani and Ashley Williams, Welch Comer Engineers
Brian M. Werst, Witherspoon Brajcich McPhee, PLLC (corporate counsel)

Nelson, Dan

From: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Sent: Friday, January 15, 2021 5:57 PM
To: Nelson, Dan
Cc: Keen, Shelley; Grimm, Angie; Rauhut, Manuel; Jones, Doug; Saxton, Craig; Jessie Camburn (jessiec@nkwsd.com); Potts Robin (robinp@nkwsd.com); NKWSD - Suzanne Scheidt (suzannes@nkwsd.com); Brian M. Werst (bwerst@workwith.com); Ashley Williams; Necia Maiani (nmaiani@welchcomer.com); Harmony Wright
Subject: Ltr (2021.01.15) CHM to Dan Nelson re accounting spreadsheet.PDF [IWOV-GPDMS.FID525891]
Attachments: 15490738_1_Ltr (2021.01.15) CHM to Dan Nelson re accounting spreadsheet.PDF

Dan,

Thanks again for your help today and over the years.

Here is the letter that I promised earlier confirming that NKWSD can provide the data necessary to IDWR to use is accounting spreadsheet to implement system-wide APODs.

We look forward to the licensing of the Nos. 95-9129, 95-9244, and 95-10019 and to movement on the RAFN application.

Everyone's hard work and cooperation has paid off.

Enjoy the holiday on Monday. A significant one for our nation.

-Chris

CHRISTOPHER H. MEYER

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Nelson, Dan

From: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Sent: Friday, January 15, 2021 12:09 PM
To: Nelson, Dan
Subject: A couple follow-up questions - NKWSD [IWOV-GPDMS.FID525891]

Dan,

I have a couple of follow up questions on the accounting spreadsheet.

I know it's the lunch hour now. (I ate early) Could you give me a ring at your convenience?

Thanks as always,

-Chris

CHRISTOPHER H. MEYER

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Nelson, Dan

From: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Sent: Monday, January 11, 2021 3:04 PM
To: Nelson, Dan
Cc: 'Ashley Williams'; Necia Maiani (nmaiani@welchcomer.com)
Subject: IDWR's spreadsheet for accounting of NKWSD ground water rights [IWOV-GPDMS.FID525891]
Attachments: NKWD Ground Water Rights with Proposed Volumes.xlsx

Dan,

In my letter to you of 12/4/2020, I said that Welch Comer would review IDWR's spreadsheet for administration of NKWSD's ground water rights to confirm that NKWSD can provide the data necessary to make that accounting work. In following up last Friday with Welch Comer I find that we do not seem to have a copy of that IDWR spreadsheet.

I had it in my head that the accounting spreadsheet was the one that Shelley Keen provided in his 3/23/2016 email below. But on closer inspection, I see that email contained a different spreadsheet (attached). As Shelley's email explains, the accounting spreadsheet was not quite ready. Perhaps that spreadsheet was provided to us later, but we cannot seem to put our hands on it now. Would you kindly provide a copy to me?

Be assured that, based on all the conceptual descriptions of the accounting spreadsheet, we are confident that we can provide IDWR the data needed, in the event of a curtailment. NKWSD's monitoring system is quite sophisticated. So don't let this email set off any alarm bells.

Likewise, whatever further review we do of the accounting spreadsheet need not hold up action on IDWR's approval of the licenses for Nos. 95-9129, 95-9244, and 95-10019. We already signed off on those last December, and we are looking forward to IDWR's action.

I will give you a call to discuss further.

-Chris

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From: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Sent: Wednesday, March 23, 2016 2:10 PM
To: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Cc: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>; Newbry, Ashley <Ashley.Newbry@idwr.idaho.gov>
Subject: North Kootenai Water District

Chris,

Thanks again for coming over to the Water Center yesterday to talk with Dan and me about North Kootenai Water District's water rights. I thought it was a valuable discussion.

As promised, I've attached the spreadsheet listing NKWD's ground water rights and our thoughts on volume limits that could prevent enlargement if all the APOD's are included on each right.

The other spreadsheet showing our proposal for administering NKWD's water rights using its SCADA system is not quite ready. Ashley Newbry wasn't available yesterday, so she is working on some finishing touches today. The updates won't change the fundamental operation of the spreadsheet. They're intended to make it completely consistent with the list of water rights in the spreadsheet attached to this email. I'll forward Ashley's spreadsheet as soon as it's ready.

Please take some time share the spreadsheets with your client, and let us know your impressions. As always, we'd be glad to answer questions or to discuss options and ideas.

Shelley

Shelley Keen
Idaho Department of Water Resources
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