

From: Charles G. Brockway [mailto:charles.g.brockway@brockwayeng.com]
Sent: Friday, April 26, 2019 5:05 PM
To: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Cc: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; 'Zach Latham' <zach.latham@brockwayeng.com>
Subject: RE: WSB Lease Application for Cimino 37-23109

Hi Angie,

Good to see that you have moved across town! I'd like to chime in here.

Our memo stated, "Mr. Cimino cannot physically take delivery of 37-23109 as the surface delivery ditches have been altered on lands of others between the point of diversion and the Cimino property, inhibiting delivery of the water right."

Our memo further stated, "Clearly, the lack of a culvert under River Grove Lane that inhibits conveyance down the historic ditch, a lack of maintenance and abandonment of the historic ditch on lots owned both other parties downstream of River Grove Lane and upstream of Mr. Cimino's Lot 8, and the lack of notification of actual ownership of a portion of 37-22255 until late 2017, all support a case for non-forfeiture of 37-23109 as outlined in 42.223.6."

In light of 42-223(6), it certainly appears that the evidence on the ground is that water is physically not deliverable to Mr. Cimino's property, and that the circumstances which caused the non-deliverability were beyond the control of Mr. Cimino. Zach Latham's e-mail below is quite accurate in terms of the circumstances which are preventing Mr. Cimino from taking delivery of his water. It appears this is all that 42-223(6) requires. Mr. Cimino cannot force his neighbors to deliver him water. Could you describe what other evidence may be needed by IDWR to confirm these circumstances?

I'm not a lawyer, but I do know that both forfeiture and abandonment are not favored, and clear and convincing proof is required to support a forfeiture. Where ambiguity exists, evidence is generally to be construed in favor of the water right holder and against forfeiture. If IDWR is interested in verifying the conditions on the ground as described in our memo, it could have an agent visit the site -- we would be happy to meet at any time.

Have a good weekend,
Chuck

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All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.

From: Zach Latham <zach.latham@brockwayeng.com>
Sent: Friday, April 26, 2019 4:33 PM
To: 'Grimm, Angie' <Angie.Grimm@idwr.idaho.gov>
Cc: 'Keen, Shelley' <Shelley.Keen@idwr.idaho.gov>; charles.g.brockway@brockwayeng.com
Subject: RE: WSB Lease Application for Cimino 37-23109

Angie-

Thank you for your email, I appreciate you getting back to Chuck Jr. and I in a timely manner.

Ownership issues aside, Mr. Cimino cannot trespass on the lands of others, tear up driveways, infrastructure, fences, lawns and other real property in order to take delivery of his water right, this is not realistic nor is it feasible and is likely the reason why 42-223 was written into law. Litigation would very likely ensue as a result of a trespass and un-authorized work on those third parties properties that lie between Mr. Cimino's POD and his POU. I'm not sure what evidence is needed by IDWR, but plenty exists in this instance to prove that delivery is not feasible due to obliteration of the historic conveyance ditch, which was not at the direction of Mr. Cimino.

We will forward this to Mr. Cimino and his legal counsel so that they can consider a request for a hearing with IDWR on this matter.

Thanks for your time.

Zach Latham

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From: Grimm, Angie [<mailto:Angie.Grimm@idwr.idaho.gov>]

Sent: Friday, April 26, 2019 1:11 PM

To: zach.latham@brockwayeng.com

Cc: Keen, Shelley

Subject: RE: WSB Lease Application for Cimino 37-23109

Mr. Latham,

Good afternoon! At your request, Shelley reviewed your 3/12/2019 memo and additional file documents with staff. Water right 37-22255, the parent right of Mr. Cimino's right 37-23109, was decreed in 2011. IDWR has no evidence that the portion of right 37-22255 that became right 37-23109 was used in the years 2011 through 2013. Mr. Cimino acquired the place of use property for water right 37-23109 in 2014. Pursuant to Idaho Code § 42-248, it is the new owner's responsibility to be aware of and notify IDWR of a change in water right ownership. Mr. Cimino filed an ownership change notice in 2017. There is no indication in your memo that Mr. Cimino made any attempt from 2014 to 2018 to divert and use water pursuant to water right 37-23109. As such, your memo did not provide evidence that circumstance(s) beyond his control prohibited Mr. Cimino from making beneficial use of the water right from 2014 to 2018. In summary, IDWR's decision to deny the lease application was because it could not discern that the right was not lost through forfeiture. See Water Supply Bank Rule 25.02.c.

If you have any additional questions regarding this matter, please feel free to contact me. Since I'm uncertain if this is our first encounter, I'd like to take a minute to introduce myself. I have been with IDWR for 15+ years and was recently promoted to the position of Water Rights Section Manager. I worked with others from Brockway Engineering on water right matters at Western Region, but I am sorry to admit I'm not certain if I've worked with you in the past. I look forward to working with you and others at Brockway on this and future water right matters.

Regards,
Angie

Angela M. Grimm, P.G.

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From: Keen, Shelley
Sent: Wednesday, April 17, 2019 10:47 AM
To: Grimm, Angie <Angie.Grimm@idwr.idaho.gov>
Subject: FW: WSB Lease Application for Cimino 37-23109

Angie,

Zach Latham and Chuck Brockway called this morning. They do not think their client's defense-to-forfeiture explanation was addressed directly. See below.

Please have someone in your group brief us (you and me) on the reason for denial of the lease application so we can consider how to respond to Zach and Chuck. Early next week would be good.

Thanks.

Shelley

From: Zach Latham [<mailto:zach.latham@brockwayeng.com>]
Sent: Wednesday, April 17, 2019 9:46 AM
To: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>
Cc: charles.g.brockway@brockwayeng.com
Subject: FW: WSB Lease Application for Cimino 37-23109

Shelley-

Thank you for taking the time to discuss the WSB lease denial of 37-23109 and the reasons we have for questioning the denial based on the inability for the water right owner to have the water right delivered due to actions of others on lands belonging to others.

Below is the email string that describes IDWR's March 5th request for additional information, our March 12th reply with the attached memo in support of the lease, and then the February 28th (incorrect date) denial letter which doesn't address the inability to take physical delivery of the water right. My April 1st email request to the Department below was never addressed, which prompted our call to you this morning.

Please review our memo in support of the water supply bank lease application and advise as to how IDWR would like to proceed.

As always, we appreciate your time and efforts. We look forward to hearing from you.

Zach Latham

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