

Grimm, Angie

From: Grimm, Angie
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.
Water Rights Section Manager
IDWR - State Office
322 E Front St Ste 648
Boise, ID 83702-7371
(208) 287-4951 phone
(208) 287-6700 fax

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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t. 208-736-8543
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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 [<mailto:zach.latham@brockwayeng.com>]
Sent: Monday, April 01, 2019 2:46 PM
To: 'Hersley, Jean'
Cc: shelley.keen@idwr.idaho.gov; charles.g.brockway@brockwayeng.com; Robert Cimino (Cimino@plazaprovision.com)
Subject: RE: WSB Lease Application for Cimino 37-23109

Jean-

We received a denial letter for Mr. Cimino's water supply bank lease application. The denial letter didn't address the fact that actions on the lands of others has precluded Mr. Cimino from being able to divert his water right and have it delivered to his property. Additionally, the denial letter has a February 28th date on it, I believe this date is incorrect based on your request below for additional information outlined in a March 5th letter. We responded to responded to your request in the email below with an attachment on March 12th.

Please clarify the date of the denial and clarify as to why the inability for physical diversion and delivery by the applicant was not considered in the processing of the lease application.
Thank you for your time, we look forward to hearing from you.

Zach Latham

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From: Zach Latham [<mailto:zach.latham@brockwayeng.com>]

Sent: Tuesday, March 12, 2019 11:12 AM

To: 'Hersley, Jean'

Cc: shelley.keen@idwr.idaho.gov; charles.g.brockway@brockwayeng.com; Robert Cimino (Cimino@plazaprovision.com)

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

Jean-

Attached is a memo in support of the Cimino 37-23109 WSB Lease application. We feel that due to the circumstances outlined and summarized in the attached memo, forfeiture is a non-concern based on Idaho Code 42-223.6, and 37-23109 should be eligible for lease to the WSB as proposed.

I will be out of town from 3/13 – 3/26/19 and will not be checking this email. Chuck Jr. can likely answer any questions or concerns you may have regarding this lease application and memo.

Thank you for your time and please let us know how and when IDWR will be proceeding with the processing of this WSB lease application.

Zach Latham

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From: Hersley, Jean [<mailto:Jean.Hersley@idwr.idaho.gov>]

Sent: Tuesday, March 05, 2019 9:13 AM

To: Zach Latham

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

My apologies. Here you go.

Jean Hersley

Idaho Dept Water Resources

Technical Records Specialist II

208-287-4942

From: Zach Latham [<mailto:zach.latham@brockwayeng.com>]

Sent: Tuesday, March 05, 2019 9:11 AM

To: Hersley, Jean <Jean.Hersley@idwr.idaho.gov>

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

Jean-

I didn't receive the attachment letter.

Can you please re-send with the attachment?

Thank you.

Zach Latham

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From: Hersley, Jean [<mailto:Jean.Hersley@idwr.idaho.gov>]

Sent: Tuesday, March 05, 2019 9:02 AM

To: Zach Latham

Subject: WSB Lease Application for Cimino 37-23109

This letter is going out in today's mail. Please let me know how your client would like to proceed.

*Jean Hersley
Idaho Dept Water Resources
Technical Records Specialist II
208-287-4942*