

Alleman, Tammy

From: schneider55 <schneider55@frontier.com>
Sent: Wednesday, January 09, 2019 11:13 AM
To: Alleman, Tammy
Subject: Re: Protested Water Right #95-17154 Aspen Creek Water Assn

Hi Tammy,

I believe we are close to a settlement with the protesters.

Bill Tracy and Mike Peters said they would remove their protests when the changes to our Articles of Incorporation and by-laws are recorded with the County and Secretary of State.

I recorded the amendments with the county and I am working with the Secretary of States office to get the amendment recorded there.

Thanks,

Bill Schneider

President: Aspen Creek Water Association

On Tuesday, December 18, 2018, 1:57:34 PM PST, Alleman, Tammy <Tammy.Alleman@idwr.idaho.gov> wrote:

Dear Interested Parties,

A Pre-Hearing Conference was held on June 28, 2017 on Application for Permit #95-17154 for Aspen Creek Water Assn. In reviewing the notes from the conference, Morgan Case, the Northern Region Manager, gave the parties 90 days to come to a resolution. Morgan Case left the Department prior to the 90 days and the case has remained in a holding pattern. Notes indicated that settlement terms were proposed but would require action from the Water Assn. We have not received any communication from anyone besides Kootenai Environmental Alliance, who withdrew their protest.

Doug Jones is the new Northern Region Manager and we are attempting to get resolve on this matter. If you have come to an agreement, please notify the Idaho Department of Water Resources of the resolution proposed to resolve the protests. If the issues have not been resolved, we will need to schedule a Status Conference to determine whether a Hearing is needed.

Due to the Holidays and people being out of town, we will give the parties until **January 9th, 2019** to respond. Once we understand what is needed, we can proceed with whatever steps are necessary to come to a resolution for this Water Right Application.

We look forward to hearing from each of you.

Thank you,

Tammy

Tammy Alleman

Administrative Assistant

Idaho Department of Water Resources

7600 North Mineral Drive, Suite 100

Coeur d'Alene, ID 83815

Tammy.Alleman@idwr.idaho.gov

208-762-2800 Phone

208-762-2819 Fax

Alleman, Tammy

From: Megan O'Dowd <megan@lyonsodowd.com>
Sent: Wednesday, January 09, 2019 3:17 PM
To: Alleman, Tammy
Cc: rebajo37@hotmail.com; vktrudeau@gmail.com; MKPTRS48@yahoo.com; schneider55@frontier.com; Jones, Doug; Frederick, Adam; Annie Harris; Donna Findlay
Subject: Re: Protested Water Right #95-17154 Aspen Creek Water Assn
Attachments: MSO to IDWR 1.9.19.pdf; Fourth Amendment RAMM-CCR's-HOA 10-2018 Recorded.pdf; First Amendment ACWA Restated Bylaws 10-2018.pdf

Tammy,

Please find attached communication regarding the status of the application for permit filed by the Aspen Creek Water Association.

Thank you,

Megan O'Dowd
201 N. 3rd St.
P.O. Box 131
Coeur d'Alene, ID 83816

office (208) 714-0487 x 2
direct (208) 596-9839
fax (888)-966-0036

megan@lyonsodowd.com

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On Dec 18, 2018, at 1:57 PM, Alleman, Tammy <Tammy.Alleman@idwr.idaho.gov> wrote:

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Tammy

*Tammy Alleman
Administrative Assistant
Idaho Department of Water Resources
7600 North Mineral Drive, Suite 100
Coeur d'Alene, ID 83815
Tammy.Alleman@idwr.idaho.gov
208-762-2800 Phone
208-762-2819 Fax*

LYONS O'DOWD

ATTORNEYS & COUNSELORS

January 9, 2019

Via email: Tammy.Alleman@idwr.idaho.gov

Idaho Department of Water Resources
c/o Tammy Alleman
7600 N. Mineral Dr., Suite 100
Coeur d'Alene, ID 83813

Re: Water Right Application No. 95-17154

Dear Ms. Alleman:

As you know, Aspen Creek Water Association filed an application for permit #95-17154 in February of 2016. Protests were initially filed by Michael K. Peters, William R. Tracy, Vicki Trudeau, Scott Van Horne and Kootenai Environmental Alliance. Mr. Van Horne withdrew his protest and KEA conditionally withdrew its protest. My client, CDA Golf, intervened in the action. A prehearing conference was held in June of 2017. At that hearing, the parties appeared to be very close to settlement. Although the exact terms of those discussions did not come to fruition, it is my understanding that the underlying issues raised by the protestors have been resolved.

The membership of the Ranch at Mica Meadows and its corresponding water association, Aspen Creek Water Association, held a meeting on October 27, 2018 and made two amendments to their governing documents. The first amendment removed 4 parcels from the Ranch at Mica Meadows (the governing homeowners association). Those parcels included Parcel 3800, 3850, 3900 and 4200, all of which are located within Section 4, Township 49 N, Range 4 W and flank Cottontail Road. Those parcels have formed their own homeowners/water association (Cottontail Water, LLC) and are no longer a part of the Ranch at Mica Meadows or Aspen Creek Water Association. Thus, Mr. Tracy is no longer a member of either the Ranch at Mica Meadows or the Aspen Creek Water Association.

Also, the Aspen Creek Water Association amended its governing documents on October 27, 2018, and redefined its membership to include the record owners of Aspen Creek First Addition, Aspen Creek Second Addition and Lot 1, Block 2, Moore View Estates (the "200 acres" owned by CDA Golf). In other words, the Cottontail residents are no longer members of the Aspen Creek Water Association and the "200 Acres" has been formally recognized as a member in the Aspen Creek Water Association.

Attached for your reference are the membership documents formalizing these changes (1) *Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for the Ranch at Mica*

Ms. Alleman

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Meadows, Instrument No. 2668257000, records of Kootenai county and (2) *First Amendment to the Amended and Restated Bylaws of Aspen Creek Water Association, Inc.*

Based on these recent developments it is my understanding that the protests will be withdrawn. To avoid unnecessary resources being devoted to a hearing, it seems reasonable to allow the protestors another 30 days to withdraw. If that does not occur, a prehearing conference would likely be in order to determine what issues (if any) remain.

Sincerely,

/s/

Megan O'Dowd

Cc: Client

rebajo37@hotmail.com

vktrudeau@gmail.com

MKPTRS48@yahoo.com

schneider55@frontier.com

Encls.

**FIRST AMENDMENT
TO THE AMENDED AND RESTATED BYLAWS
OF
ASPEN CREEK WATER ASSOCIATION, INC.**

THIS FIRST AMENDMENT TO THE 'AMENDED AND RESTATED BYLAWS OF ASPEN CREEK WATER ASSOCIATION, INC' (First Amendment) is made to that certain document adopted August 1, 2011.

- 1. Article V - Membership, Section 1 Member, is deleted in its entirety and amended as follows:**

Members of the Corporation shall consist of those persons who are record owner of real property located within Aspen Creek First Addition (Instrument No. 1931836, Book J, Page 152, Records of Kootenai County, ID (with the exception of Lot 2 BLK 1); Aspen Creek Second Addition (Instrument No. 1931837, Book J, Page 153, Records of Kootenai County, ID); and Lot 1, Block 2, Moore View Estates (Instrument No. 2479353000, Book K, Page 487, Records of Kootenai County, ID), as may be amended from time to time, shall be entitled to Membership and voting rights within the Association in accordance with these Bylaws, subject to the terms and conditions of this Article V (each a "**Member**", collectively the "**Members**").

- 2. Article IX - Benefits and Duties of Members, Section 2 - Service Lines, is deleted in its entirety and amended as follows:**

Each Member shall be entitled to one service line, the quantity of water shall not to exceed 13,000 gallons per day; Domestic use of one line for one Lot from the Association's water system to each residence owned by such Member. No new service line or change in an existing service line may be made which will interfere with an existing service line or the delivery of water therein. Each service line shall connect with the Association's water system at the nearest available place to the place of desired use by the Member if the Association's water system shall be sufficient capacity to permit the delivery of water through a service line at that place within the district without interfering with the delivery of water through a prior service line. If the Association's water supply is inadequate to permit the delivery of water through a service line installed at such place without interfering with the delivery of water

through a prior service line, then such service line shall be installed at such place as may be designated by the Association.

3. Article IX - Benefits and Duties of Members, Section 4 - Purchase of Water For Domestic Purposes shall be deleted in its entirety and amended as follows:

Each Member shall be entitled to purchase from the Association, pursuant to such agreements as may from time to time be provided, and required by the Association, such water for domestic purposes, including livestock, as a Member may desire, subject, however, to the provisions of these Bylaws and to such rules and regulations as may be prescribed by the Board of Directors. Each Member shall be entitled to have delivered to him such water as may be necessary for domestic water purposes, which is defined as "The quantity of water shall not exceed 13,000 gallons per day, domestic use of one line for one lot". The water delivered through each service line will be metered and the charges for such water shall be determined separately, irrespective of the number of service lines owned by a Member.

By signing below, The President of Aspen Creek Water Association, Inc. an Idaho non-profit Corporation, certify this First Amendment was approved by the Members representing at least sixty-seven (67%) of the total voting power of the Association.

IN WITNESS WHEREOF, this First Amendment is hereby executed and effective this 27th, day of October, 2018.

ASPEN CREEK WATER ASSOCIATION, INC.

By: William Schneider 10/30/2018
Name: William Schneider
Title: President

RECORDING FEE: \$13.00

SC



Recording Requested By and
When Recorded Return to:

Ranch at Mica Meadows Homeowners Association, Inc.
c/o Bill Schneider
5801 W Quaking Aspen Dr
Coeur d'Alene ID 83814

**FORTH AMENDMENT
TO
DECLARATION OF COVEMENTS, CONDITIONS AND RESTRICTIONS FOR
THE RANCH AT MICA MEADOWS**

THIS FORTH AMENTMENT TO THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE RANCH AT MICA MEADOWS ("**Fourth Amendment**") is made to that certain Declaration of Covenants, Conditions and Restrictions for The Ranch at Mica Meadows, recorded February 25, 2005, as instrument No. 1931838, as amended by that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for The Ranch at Mica Meadows Home Owners Association, Inc., recorded on October 2, 2006, as Instrument No.2058805000, as further amended by that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for The Ranch at Mica Meadows Home Owners Association, Inc., recorded August 6, 2008 as Instrument No 2172580000, and as also encumbering that real property annexed to the residential subdivision, as more particularly described in that certain Notice of Inclusion to the Covenants, Conditions and Restrictions, recorded on August 4, 2005 as Instrument No. 1970098, Official Records of Kootenai County, Idaho (collectively, the "**Declaration**"), as follows:

1. "Notice of Inclusion" to Covenants, Conditions and Restrictions for The Ranch at Meadows Home Owners Association, Inc., recorded on August 4, 2005, as instrument No. 1970098 is withdrawn and deleted in its entirety.

By signing below, the President of The Ranch at Mica Meadows Homeowners Association, Inc., an Idaho non-profit corporation certify this Fourth Amendment was approved by the members representing at least sixty-seven percent (67%) of the total voting power of the Association.

IN WITNESS WHEREOF, this Fourth Amendment is hereby executed and effective this 27th day of October, 2018.

THE RANCH AT MICA MEADOWS
HOMEOWNERS ASSOCIATION, INC.

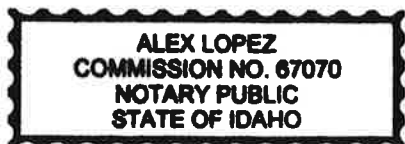
By: *William G. Schneider*
Name: William Schneider
Title: President

STATE OF IDAHO

County of Kootenai

On this 30th day of October, 2018, before me
Alex Lopez, a Notary Public in and for said State, personally appeared William Schneider, known or identified to me to be the President of The Ranch at Mica Meadows Homeowners Association, Inc., the non-profit corporation that executed the within instrument or the person who executed the instrument on behalf of said non-profit corporation, and acknowledged to me that such non-profit corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Alex Lopez
Notary Public for Idaho
Residing at *Coeur d'Alene*
My commission expires *1/29/2022*