

Keen, Shelley

From: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Sent: Thursday, October 12, 2017 4:08 PM
To: Peppersack, Jeff
Cc: Keen, Shelley; Nelson, Dan; Fritschle, Carter
Subject: RE: North Kootenai Water and Sewer District [IWOV-GPDMS.FID525891]

Jeff,
Thanks so much for the very timely response.
Your edits are all excellent clarifications. Good catches.
I agree that they do not change any of the bottom lines.

I will be touching base with NKWD.
We will follow up shortly.

Thanks so much to you and your great team over there.

-Chris

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From: Peppersack, Jeff [mailto:Jeff.Peppersack@idwr.idaho.gov]
Sent: Thursday, October 12, 2017 4:03 PM
To: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Cc: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; Nelson, Dan <Dan.Nelson@idwr.idaho.gov>; Fritschle, Carter <Carter.Fritschle@idwr.idaho.gov>
Subject: FW: North Kootenai Water and Sewer District [IWOV-GPDMS.FID525891]

Chris,
I enjoyed meeting with you yesterday. I think you've captured the essence of our meeting. I offer a few clarifications.
Jeff

From: Christopher H Meyer [mailto:ChrisMeyer@givenspursley.com]
Sent: Thursday, October 12, 2017 1:57 PM
To: Peppersack, Jeff <Jeff.Peppersack@idwr.idaho.gov>
Cc: Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; Nelson, Dan <Dan.Nelson@idwr.idaho.gov>
Subject: RE: North Kootenai Water and Sewer District [IWOV-GPDMS.FID525891]

Jeff,

Thanks again so much for meeting with me yesterday afternoon to review where we stand on the issues addressed in my 8-29-2017 memo to Shelley Keen regarding North Kootenai Water District.

I told you that I would send you an email re-capping what I understood to be the take-aways from the meeting. Please let me know if this is a fair summary. Your corrections and additions are welcome.

The following notes are offered in no particular order:

You confirmed that my 8-29-2017 memo accurately described the Department's position on the various technical points and legal positions discussed.

With one exception. For those water rights where the Department will recommend only "mini-APODs," my memo said that the Department will recommend similarly restrictive mini-POUs (limited to the area served by the physical distribution system). You corrected that, saying that the Department will recommend a system-wide POU based on the "growing service area" principle for municipal providers. NKWD, of course, is pleased to hear that.

You confirmed that IDWR is comfortable with recognizing system-wide APODs (not limited to individual distribution systems) based on NKWD's SCADA system and associated reporting obligations and your spreadsheet-based accounting system **and volume limits to ensure no enlargements**.

Such APOD recognition is forward-looking only (though existing APODs will continue to be recognized). Thus, it may allow NKWD to proceed with a single, system-wide RAFN application. (I.e., we can re-combine the four applications back into one.)

Likewise, system-wide APODs may be achieved via formal transfers of existing rights **or amendments of existing permits** (based on the SCADA system, etc.), but they will be subject to the annual volume limits described in the 8-29-2017 memo.

System-wide APODs will not be recognized for accomplished transfers. (IDWR is sticking to its more restrictive reading of the Pocatello case, **Adjudication rules, and accomplished transfer statutes**) Those rights that do not already have system wide will be recommended with mini-APODs (corresponding to the physical delivery system in place at the time of commencement) as described in the 8-29-2017 memo **unless transfers are approved prior to recommendations**.

All APODs recognized for on existing permits and licenses will continue to be recognized and will be reflected in corresponding CSRBA recommendations and pending licenses for Nos. 95-9244 and 95-10019.

If NKWD wishes to proceed with formal transfers to achieve broader APODs, it should file those applications right away. Depending on matters beyond anyone's control (e.g., protests), it is possible that such transfer applications will not be resolved by the time the Director's Reports issue on these rights in the CSRBA. If so, those recommendations will be based on the status of the rights as they exist today, **or the Director's Reports for those rights could be submitted later in time if they are proceeding forward toward timely approvals**. If and when any transfer applications are approved, it may be possible to amend the Recommendations to reflect the changes.

The RAFN application does not need to be held up pending completion the CSRBA **assuming NKWD is agreeable to the above**. It may proceed now on a parallel track with the adjudication. In the event that the RAFN application moves toward completion faster than the CSRBA, then it will be necessary to retain the combined use condition (to which NKWD has already agreed). In other words, the RAFN permit, if approved, will pick up the slack in long term need, whatever the slack turns out to be once the other rights and permits are adjudicated in the CSRBA.

It is incumbent on NKWD to get info to IDWR right away on No. 95-4027 in order to document that this beneficial use right was beneficially used before the deadline for mandatory permitting (March 23, 1963).

NKWD's engineer (Welch Comer) will work directly with IDWR staff to resolve the rate issue on No. 95-10019. Welch Comer may need to provide some further documentation, but there no longer appears to be a difference in how IDWR and NKWD view this issue.

IDWR will not budge on the accounting methodology for the APOD rights **absent acceptable alternatives, which have not been submitted by NKWD**. **To prevent enlargement of junior NKWD water rights, they will be administered based on a spreadsheet that treats all in-priority rights as being used proportionately**. **In NKWD's opinion**, This works to the

disadvantage of NKWD in the event of a midyear curtailment. NKWD will have to live with this or offer a reasonable accounting alternative that will allow curtailment by priority, when necessary, while preventing enlargement.

We do not need to deal with Permit No. 95-12599 for some time. Proof is not due until 2021. By that time, we expect to have decisions and precedents in place that will guide how it is addressed.

Again, Jeff, thanks to you and to Shelley, Dan, the rest of the IDWR staff for your cooperation and collegiality in working through these issues. Do let me know if this email conforms to your understanding of where things stand.

Best,
-Chris

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From: Peppersack, Jeff [<mailto:Jeff.Peppersack@idwr.idaho.gov>]
Sent: Tuesday, October 10, 2017 4:41 PM
To: Christopher H Meyer <ChrisMeyer@givenspursley.com>
Subject: North Kootenai Water and Sewer District

Chris,
I've had a chance to review the NKWSD issues. Last we spoke you suggested a phone call or meeting to discuss where we're at. How would you like to proceed?
Jeff