

Miller, Nick

From: Dylan Hedden <dhedden@indian-law.org>
Sent: Monday, February 27, 2017 4:38 PM
To: Miller, Nick
Cc: Mark Rose; Mary Marshall
Subject: Karney Lakes WR no. 63-3068
Attachments: 2017-02-27 DHN-Miller.pdf

Mr. Miller:

It was good to talk with you today. Pursuant to our discussion, please find attached to this email a letter requesting guidance from IDWR regarding whether water right no. 63-3068 includes a right to refill Karney Lakes in the spring before the irrigation season. Should you have any questions or concerns please do not hesitate to get in touch. Thank you for your time and consideration of this important matter. DHN.

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February 27, 2017

Nicholas Miller,
Western Region Manager
Idaho Department of Water Resources
Western Regional Office
2735 Airport Way
Boise, ID 83705-5082

Re: Karney Lakes Water Right No. 63-3068

Mr. Miller:

I am writing on behalf of Karney Lakes Club, Inc. ("Club") to seek clarification regarding the Idaho Department of Water Resource's ("IDWR") interpretation of water right no. 63-3068. In particular, the Club seeks guidance on whether this water right includes the right to fill the lakes in the spring, prior to the commencement of the irrigation season.

Karney Lakes consists of two small naturally occurring lakes; an upper and lower lake. The upper lake is spring fed and water flows from the upper lake into the lower lake, which drains into Karney Creek. Although these lakes are naturally occurring, inflows are not sufficient during the summer to maintain lake elevation. To account for this, the Club diverts water during the spring and summer from Karney Creek "to keep [the] two small lakes full and supplied with fresh water."¹ The Club has managed the water level in this manner since at least 1955 and perhaps as early as 1920.²

The stated purpose of water right no. 63-3068 is recreation and to "maintain the level of the lakes." Recently, questions have been raised about whether water right no-3068 includes the right to fill the Lakes in the spring before the irrigation season or whether a diversion to storage water right is also necessary. The Club notes that IDWR's definition for a "recreation" water right is broad; referring

¹ See water right license no. 63-3068 in Adjudication Backfile no. 63-3068; SRBA Decree for water right no. 63-3068 in Adjudication Backfile no. 63-3068; Application for Permit no. 63-3068 in Water Right Backfile no. 63-3068; Report of the Engineer for Permit No. 26093 in Water Right Backfile no. 63-3068.

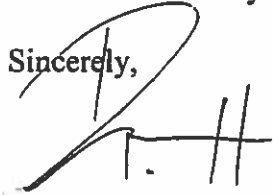
² See Proof of Application of Water to Beneficial Use--Deposition of Holder in Water Right Backfile no. 63-3068.

to “water use for private, non-commercial sports and entertainment. Examples of recreation use include swimming pools, fishing ponds and water skiing facilities.”³ In many contexts, these types of water uses necessitate storage and seasonal refill. The Club further notes a number of other recreation water rights in Basin 63 that require seasonal refill but do not have a diversion to storage component. *See e.g.*, Water Right Nos. 63-4016; 63-7891; 63-9698; 63-10072; 63-10367.

For at least as long as water license no. 63-3068 has been in effect, the Club’s practice has been to drain the lakes in the fall for safety as well as aquatic weed maintenance purposes and then to refill the lakes in the spring. The Club suggests that IDWR has long recognized this practice. On at least two occasions IDWR officials have conducted field examinations of the Karney Lakes system.⁴ Multiple documents in the backfile state that the purpose of the water right is to “maintain the level of the lakes sufficient for swimming, [b]oating and fire protection purposes to summer homes located adjacent to the lakes.”⁵ Recognizing the seasonal nature of this water right, the period of use for the Club’s water right decree—recommended by IDWR in the SRBA—is April 1 through October 31. Importantly, the initial field examination from 1958 documents the existence of a five-inch drain in the lower lake, which was installed to allow for total drainage at the end of the summer.

Given these factors, the Club earnestly believes that it has always been the understanding of IDWR that water right no. 63-3068 includes a right to fill the lakes in the spring before the irrigation season. However, the Club requests IDWR clarify its position to the extent this remains an open question. Thank you for your consideration of this matter that is of the utmost importance to the members of Karney Lakes Club, Inc.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Hedden-Nicely", with a stylized flourish at the end.

Dylan R. Hedden-Nicely

³ IDWR Claim Review Handbook, Ch. 6, p. 7 (updated 2002).

⁴ *See* Report of the Engineer for Permit No. 26093 in Water Right Backfile no. 63-3068; Claim Verification Field Exam Sheet in Adjudication Backfile no. 63-3068.

⁵ *See e.g.* Report of the Engineer in Water Right Backfile no. 63-3068; Notice of Proof Application of Water to Beneficial Use in Water Right Backfile no. 63-3068; Approval of State Reclamation Engineer in Water Right Backfile no. 63-3068.