



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER

Governor

JUNE 5, 2017

GARY SPACKMAN

Director

DYLAN HEDDEN-NICELY
HOWARD FUNKE & ASSOCIATES, P.C.
424 SHERMAN AVE STE 308
PO BOX 969
COEUR D' ALENE ID 83816-0969

RE: Karney Lakes Water Right No. 63-3068

Dear Mr. Hedden-Nicely:

I received your letter of February 27, 2017 regarding the water right held by the Karney Lakes Club (The Club). In your letter you ask for clarification as to whether the recreation use authorized under water right 63-3068 authorizes The Club to fill the lakes in the spring or if a separate water right describing a storage use is needed. As you note in your letter, the use of the term "recreation" as a beneficial use is fairly broad and has changed some over time. To avoid the kinds of questions we are encountering here, the current practice in the department include a separate use to describe and quantify the storage component. Yet, at the time this right was licensed it appears the recreation term included a storage component and was carried over that way into the decree issued by the Snake River Basin Adjudication Court (SRBA).

The right was decreed by the SRBA with a condition that reads, "The purpose of use is to maintain water levels in the Karney Lakes". I cannot be certain of what the court intended, but it seems clear that it would be difficult to maintain a water level in a lake without storing some amount of water. The wording of that condition supports a conclusion that the recreation use does include some component of storage. That condition alone may not be conclusive as to whether the right authorizes filling the lakes in the spring. However, if we accept that the recreation use includes some volume of storage, we must also recognize that the volume of water diverted into storage is not limited on the face of the right, so nothing specifically prevents filling the lakes in the spring under this right.

Importantly, the right is limited at all times to diverting water in conformance with the remaining elements of the rights (diversion rate, season of use, and priority date in particular). So as long as the elements of the rights are adhered to and the right is not diverted when it is out of priority, I do not see that a separate storage right is needed either to protect other users, or to authorize or protect The Club's practice of storing water.

Note that Karney Creek has not historically been regulated to the same priority date as the Boise River. It is possible that in particularly dry future years right 63-3068 may not be available in priority to fill the lakes beyond whatever fill is obtained via rainfall and snowmelt. Further, bear in mind that even in typical years, refill of storage later in the season may not be available if senior downstream water rights are not being satisfied.

I hope this helps clarify the use of water for The Club. Please contact me if you have further questions or concerns regarding this matter.

Sincerely,

Nick Miller
Manager, IDWR Western Region

cc: Rex Barrie, Watermaster Water District 63