



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

May 15, 2017

PARADISE HOMEOWNERS ASSOCIATION
C/O RAY LINGENZA PRESIDENT
1088 E PARADISE DRIVE
PINE ID 83647

RE: Lapsed Permit No. 63-32016

Dear Mr. Lingenza:

The Idaho Department of Water Resources ("IDWR") has reviewed your request to waive the measuring device requirement for lapsed permit no. 63-32016 ("Permit"). Your request arose in connection with IDWR's evaluation of your petition to reinstate the Permit pursuant to Idaho Code § 42-218a(2). As I know you are aware, completion of a Beneficial Use Field Report ("Field Report") by a certified water right examiner ("CWRE") is required by Idaho Code § 42-218a(2) before a lapsed permit can be reinstated. In March of this year IDWR returned the Field Report prepared by CWRE Scott King for the Permit because it did not meet the requirements of IDWR's Beneficial Use Examination Rules (IDAPA 37.03.02). Among the Field Report deficiencies was the lack of confirmation that the measuring device and lockable controlling works required by approval condition no. 5 of the Permit had not been installed. Because the Field Report was incomplete, IDWR has not issued an order approving or denying your request to reinstate the Permit. IDWR currently understands the Field Report may be resubmitted soon.

If the Field Report is resubmitted, IDWR will not find it acceptable unless it confirms that the required measuring device and lockable controlling works have been installed. IDWR has reviewed the waiver recommendation of Water District 63 watermaster, Rex Barrie, and finds it to be inconsistent with the August 15, 2014, *Final Order* requiring measuring devices and controlling works for diversions in Water District 63 ("Final Order"). The Final Order states:

The holders of water rights in Water District No. 63, except those water rights listed in subsection a. below, shall install on each point of diversion from the Boise River or tributaries to the Boise River a measuring device and lockable controlling works or a head gate of a type acceptable to IDWR for the purpose of assisting the water district watermaster in measuring and reporting the amount of water withdrawn from each diversion, and controlling the amount of water at each diversion. Water rights that are exempt from the measuring device requirements of this order are limited to:

- a. Any water rights in which the point of diversion is used for irrigation of five (5) acres or less and/or non-irrigation uses in which the total rate of diversion is 0.24 cfs or less, unless the watermaster determines at some future date that measuring devices and controlling works are necessary to address water delivery disputes or conflicts among holder of different priority water rights diverted from the same source of water.

The Final Order also stated:

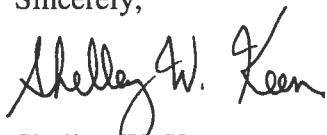
In some situations, IDWR may exempt a diversion from the requirements of this order or may allow deferred compliance for a diversion. IDWR will consider each request for exemption or deferral on a case-by-case basis. Conditions that may result in exemption or deferral include, but are not limited to, the following:

- Abandonment, non-use, or consolidation of diversions that results in a diversion being unused, or reduces the total diversion rate to 0.24 cfs or less and/or irrigation of five acres or less.
- Delays caused by requirement of other government entities.

Should it be reinstated, the Permit does not qualify for an exemption or deferral from the measuring device and lockable controlling works requirement stated in the Final Order because it is not for irrigation purposes, it is not for less than 0.24 cfs, you have not reported delays caused by other government entities, and you have reported no other compelling reasons for an exemption or deferral. Moreover, the CWRE reported that the permitted water use shares points of diversion with Water Right No. 63-10560, which is also subject to the measuring and reporting requirements of the Final Order. Therefore, should you continue to pursue reinstatement of the Permit, IDWR will expect the CWRE to verify full compliance with the measuring device and lockable controlling works requirement.

If you have any questions, please call me at 208-287-4947, or email me at shelley.keen@idwr.idaho.gov.

Sincerely,



Shelley W. Keen, Manager
Water Rights Section

cc: Tim Luke
Rex Barrie

Nelson, Dan

From: Nelson, Dan
Sent: Monday, May 08, 2017 12:03 PM
To: 'Paradise HOA'; Fowers Randy & Becky; Harold Johnson; Jenifer Marcus; Norm Semanko; Rex Barrie; Scott King
Subject: RE: Reinstatement Application Paradise Home Owners Association Pine, ID Permit 63-32016

Dear Mr. Lingenza,

I have received this email, and I will work through the process to provide an answer to the measurement device requirement for Permit 63-32016. I will contact you as soon as I receive a response from our Administrative Staff on this issue.

Respectfully,

Daniel Nelson
Water Right Analyst 3
Idaho Department of Water Resources
Telephone (208) 287-4856
Fax (208) 287-6700 (attn: Dan Nelson)

From: Paradise HOA [mailto:paradisehoa2017@gmail.com]
Sent: Monday, May 08, 2017 11:48 AM
To: Fowers Randy & Becky <rfowers@msn.com>; Harold Johnson <vmhljohn@cableone.net>; Jenifer Marcus <jenifer.marcus@hotmail.com>; Nelson, Dan <Dan.Nelson@idwr.idaho.gov>; Norm Semanko <nms@moffatt.com>; Ray <Paradisehoa2017@gmail.com>; Rex Barrie <waterdistrict63@qwestoffice.net>; Scott King <SKing@spfwater.com>
Cc: Miller, Nick <Nick.Miller@idwr.idaho.gov>
Subject: Re: Reinstatement Application Paradise Home Owners Association Pine, ID Permit 63-32016

Mr. Dan Nelson:

On behalf of the Paradise Home Owner's Association I wish to thank you for reviewing Mr. Rex Barrie's recommendation and providing us your comments.

We wish to not miss out on any steps necessary to successfully complete our reinstatement application for permit 63-32016. We wish to formally request your approval and your Department's approval to waive the need for a measuring device at this time as recommended by Watermaster Mr. Rex Barrie.

In conjunction with this request your were copied with our original letter to Mr. Barrie that described our existing system. We hope you will consider that letter as part of this request. In addition, we fully understand Mr. Barrie's position on locking the control valves. Should this condition arise Mr. Barrie would be given unfettered access to the controls.

Mr. Scott King will address the other items you have raised in your initial report.

I hope that we can successfully meet the intent of your Departments requirements and have permit 63-32016 reinstated.

Again, thank you for your consideration of our request.

Sincerely,

Raymond Ligenza, President
PHOA

On Mon, May 8, 2017 at 10:53 AM Nelson, Dan <Dan.Nelson@idwr.idaho.gov> wrote:

Ladies and Gentlemen,

I have received Rex Barrie's, the Watermaster for Basin 63, comments on the measurement device for Paradise Home Owner's Association. I will place a copy of the comments in the file until our office receives a formal request to waive the measurement device, and the remaining items discussed in my letter dated March 2, 2017.

I do want to inform you that while Mr. Barrie's comments will help you tremendously in seeking a waiver of the measurement requirements, it will still be up to the Department's administrative staff to make the final determination as to whether the measurement device requirement can be waived or not.

I would also like to remind you that you have directed us to hold the re-instatement fee for permit 63-32016 until May 31, 2017. At that time, we will return the fee to your organization. If you have any further questions, please don't hesitate to contact me

Respectfully,

Daniel Nelson

Water Right Analyst 3

Idaho Department of Water Resources

Telephone (208) 287-4856

Fax (208) 287-6700 (attn: Dan Nelson)

From: Miller, Nick

Sent: Monday, May 08, 2017 9:53 AM

To: Nelson, Dan <Dan.Nelson@idwr.idaho.gov>

Subject: FW: Reinstatement Application Paradise Home Owners Association Pine, ID

Dan,

Are you working on this one?

From: Rex Barrie [<mailto:waterdistrict63@qwestoffice.net>]

Sent: Thursday, April 27, 2017 6:52 AM

To: Miller, Nick <Nick.Miller@idwr.idaho.gov>

Cc: Paradise HOA <paradisehoa2017@gmail.com>

Subject: FW: Reinstatement Application Paradise Home Owners Association Pine, ID

Nick,

I visited this site yesterday with Mr. Ligenza and he explained the request to re-instate the permit.

This system has been in place for several years. The two pump houses are controlled by a system of valves that provide heating water to the homes or cabins as well as the two hot pools.

It is my conclusion that the HOA has met the requirement for a lockable controlling works as the valves could be locked by the Watermaster if needed.

As for the measuring device requirement, I would allow it to be waived at this time with possible installation at a later time if notified by IDWR.

Please call me if you wish to discuss this in more detail.

Rex R. Barrie

Boise River Watermaster

From: Paradise HOA [<mailto:paradisehoa2017@gmail.com>]

Sent: Wednesday, April 26, 2017 11:09 AM

To: Rex Barrie

Cc: Scott King; Harold Johnson; Randy Fowers; Jenifer Marcus; Nelson, Dan; Norm Semanko

Subject: Reinstatement Application Paradise Home Owners Association Pine, ID

Thank you again Rex for coming and reviewing our hot water system and explaining the criteria we need to address.

As requested, attached is the re-instatement application submitted to IDWR from Scott King, SPF Engineering.

We appreciate your assistance in informing IDWR of your decision.

Best regards,

Ray Ligenza, President

Paradise Home Owner's Association