



United States
Department of
Agriculture

Forest
Service

Ashton/Island Park Ranger District

46 South Highway 20
P.O. Box 858
Ashton, ID 83420
208-652-7442
Fax: 208-652-7863

RECEIVED
APR 17 2017

Department of Water Resources
Eastern Region

File Code: 2500
Date: April 12, 2017

Justin Peterson
Bunts and Singles, LLC
225 South 200 East, Suite 300
Salt Lake City, UT 84111

Dear Mr. Peterson,

This is a follow-up letter to my January 5, 2017 to you. I have yet to have discussions with you about a special use permit that is necessary for the activities and occupancy of National Forest System (NFS) land you are seeking through your Application for Transfer 81352 filed with the Idaho Department of Water Resources (IDWR). The Forest Service did not file a protest to this application because any extension of the water infrastructure on NFS land to your private land would require you to submit a proposal for a special use permit from the Forest Service pursuant to Title 36 Code of Federal Regulations 251 (36 CFR).

Transfer 81352 is now in the Prehearing Conference stage because protests were filed. The Forest Service has been invited to participate in these proceedings. During the Prehearing Conference March 20, 2017, it was discussed that your water right 21-04071A and our water right 21-04071 are stacked. It is my understanding that this is an impediment to the transfer unless the Forest Service abandons 21-04071.

Given this development I need to notify you how I am going to proceed with the information available to me concerning this transfer because other parties are now involved and other procedures are in play. The next five paragraphs of this letter is what I would need to do IF the information provided in your Application for Transfer 81352 was submitted as your proposal to me for the activities you desire to accomplish on NFS land. To date, I have received no information or application from you. The information below was obtained from the IDWR site.

If I understand correctly, you propose to divert water from the existing spring box "into a new pipeline to be delivered to the proposed place of use". This is in addition to the water that might be supplied by the well completed at the place of use September 15, 2016.

Our regulations require a proposed use be evaluated against prescribed initial screening criteria to ensure it meets minimum requirements. Any proposed use that does not meet all of the minimum requirements, shall not receive further evaluation and processing. The proposed use must be consistent with the laws, regulations, and policies establishing or governing National Forest System lands. The Forest Service Manual states "authorize use of NFS lands only if the proposed use cannot reasonably be accommodated on non-NFS lands" (FSM 2703.2(2)(b)). Because there is water available from the new well on your private land your proposed use for domestic water can reasonably be accommodated on non-NFS lands and fails to meet the initial screening criteria stated above. Therefore, I would deny your proposal to construct a new pipeline from the existing spring to the forest boundary.

With respect to the spring feeding the ponds, our 1966 special use permit with Hagenbarth's has "a small pond including an earth-filled dam" as part of the authorization. The existing special use



permit to your family also includes a pond. However using the numbers in the narrative for Transfer 81352 a 0.9 acre pond surface averaging 5 feet deep would appear to have a capacity of 4.5 acre feet or just about 1.5 million gallons of water. Even if the ponds were only 1 inch deep there would be over 24,000 gallons of water stored in the ponds. This appears to exceed the 13,000 gpd for a domestic water right that lacks any storage component. These two ponds will be replaced with one pond "with an approximate volume of 8 acre-feet".

The proposal "to abandon the existing ponds by draining and then back-filling" has not been fully approved or agreed upon. It may be desirable to leave them as they are thereby avoiding additional disturbance. The intent would be not to promote storage or otherwise hold back water in the ponds but allow water to flow unrestrained or restricted and allow the ponds to fill in and naturalize. This action would also have to take into consideration and avoid interference with possible points of diversion in this vicinity for existing downstream irrigation water rights.

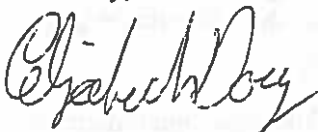
I see from one aerial image in the Transfer Application package that the new pond would inundate the road that provides access to the forest. This is Forest Service Road Number 0480. There is a 33 foot wide Right-of-Way (ROW) for this road in the name of the United States of America. The location of the proposed pond seems to compromise the integrity and functionality of this ROW. This needs to be factored into this overall Transfer situation.

I see no need at this time to alter the status of the United States water right 21-04071. All the rehabilitation work needed to restore the NFS land where your cabin and other facilities were located needs to be completed. When this work is finished I will decide what the future use of the site might be and how water right 21-04071 will fit into those plans.

I appreciate your cooperation in relocating the cabin and other structures from NFS land to your private land and in accomplishing agreed upon rehabilitation. We have worked on this for many years. However I need to reiterate that at this time you are not authorized to occupy and use NFS land as described and anticipated in Application for Transfer 81352.

If you have any questions about this matter please contact me at 208-652-7442.

Sincerely,



ELIZABETH DAVY
District Ranger

cc: Idaho Department of Water Resources, Jerry Rigby, John Marshall, James Hagenbarth, Deputy Attorney General, Fremont-Madison Irrigation District, Rocky Mountain Environmental

Enclosure (1)



United States
Department of
Agriculture

Forest
Service

Ashton/Island Park Ranger District

4600 South Highway 20
P.O. Box 858
Ashton, ID 83420
208-652-7442
Fax: 208-652-7863

File Code: 2500
Date: January 5, 2017

Bunts & Singles, LLC

225 South 200 East, Suite 300
Salt Lake City, UT 84111

Dear Mr. Peterson

We see that you have filed Application for Transfer 81352 with the Idaho Department of Water Resources (IDWR). This Application is to change the Place of Use for water right 21-04071A. The source for this water right is two springs on National Forest System (NFS) land. Apparently one spring is for domestic use and the other spring feeds two ponds on NFS land. The transfer seeks to pipe the domestic spring from NFS land to the cabin that your family moved from NFS land to your adjacent private land. The second spring will be conveyed by ditch to a new pond on private land.

We were not aware of your plans to continue use of these two springs. Our discussions with Justin Peterson were that a new well would be drilled on the private land to supply domestic water at the cabin and water would cease to be diverted into the existing ponds whereby they would naturalize. We also see that the new well was completed September 15, 2016.

You are aware that a special use permit would be needed to authorize the use proposed in Transfer Application 81352. We have had no communication with you or the family about these proposed new uses that would convey water across NFS land to your private land. At the present time you are not authorized to conduct any of the activities on NFS land proposed in this application.

The purpose of this letter is to notify you of our concerns and advise you of the Forest Service requirements for occupancy and use of NFS land. You need to contact us about your proposed new use of NFS land. We will need sufficient detail to evaluate your proposal against two levels of screening criteria and applicable laws and regulations such as the Organic Act (19 U.S.C. 551), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761) and 36 Code of Federal Regulations (CFR) at 251 Subpart B – Land Uses.

By a copy of this letter we are notifying IDWR that you do not have authorization to occupy and use NFS land as described in the documents filed with the department for this transfer and request that they not process this application until this matter can be resolved.

If you have any questions about this matter please contact me at 208-652-7442.

Sincerely,

ELIZABETH DAVY
District Ranger

cc: Idaho Department of Water Resources; Rocky Mountain Environmental Associates

