

Keen, Shelley

From: Wendy St. Jean <kdive@me.com>
Sent: Monday, January 09, 2017 9:26 AM
To: Keen, Shelley
Cc: Randy & Becky Fowers; Harold Johnson; Jenifer Marcus
Subject: Paradise Home Owner's Association Information
Attachments: 1 6 2017 letter to Burneys.docx; 9 6 2016 PHOA letter.docx; 9 23 2016 PHOA Letter.docx; 11 6 2016 PHOA Letter.docx; Boise nat. Forest easement.pdf; Schaffer.pdf

Thank you Shelley for taking my call this morning and as discussed attached is the information our Board has developed for filing with IDWR.

Of special note, former Elmore County Commissioner Connie Cruser emailed the following comment:

Ray,

Thank you so much for the information. The last thing we heard was a note from Julene that said there was some difficulties with the Board, the pres. resigned and she would finish the first of November. I feel like we are way behind, but having been involved with Paradise for almost 40 years, I find it interesting that anyone from Grouse Creek would think they are entitled to the hot water for heating. We don't remember that ever being discussed. The only thing we remember being discussed was cold water for 6 months a year.

If we can help with anything, please let us know. A big "thank you" to you and whoever is working on this problem.

Regards,

Ray Ligenza

January 6, 2017

Mickey Burney
3410 Ridgeline Drive
Kimberly, Idaho 83341

Twyla J Anderson, GCC Registered Agent
851 E Garfield Avenue
Glenns Ferry, Idaho 83623

Dear Grouse Creek Cabins, Inc:

This letter is intended to correct some of the misstatements in the letter from Andrew Waldera, the attorney hired by Mickey and Dave Burney, dated December 20, 2016 ("Waldera Letter") "so as not to risk later confusion or invite arguments of acquiescence or agreement by silence." Mr. Waldera continues to claim, incorrectly, that the Grouse Creek Cabin, Inc. ("GCC") cabins have been and are heated through the PHOA hot water delivery system. They are not and never have been. Physical examination of the existing cabins will confirm that fact, and current and former GCC owners have confirmed it in response to recent inquiries

Although the Paradise Homeowners Association ("PHOA") Board does not believe (see, attached letters dated September 6 and 21, 2016 and November 6, 2016) that the 1977 Agreement between GCC and Paradise Resorts ("1977 Agreement") obligates the PHOA to negotiate a contract with the GCC for the PHOA to provide the GCC lot with access to the PHOA hot water delivery system, the PHOA Board has offered to negotiate such a contract with the GCC lot owners in the interest of resolving this matter.

The 1977 Agreement specifically states that the GCC lot owners do not have a right to hot water for heating purposes, unless the parties (Paradise Resorts, Inc. and GCC) separately negotiate an agreement. Paragraph 5 of the 1977 Agreement states:

5. Paradise further agrees to install a hot water line along the north portion of the described premises, with three outlets conveniently spaced to provide hot water for the occupants of the seven described parcels of land. **The hot water is to be used only for culinary and domestic uses and shall, in no event, be piped into any cabin or dwelling, nor shall the same be used in such a manner that it may run into the sewer line.** It is the intent of Paradise, at some time in the future, to make the hot water available to Grouse Creek for the purpose of heating cabins and dwellings; **at the time there will be a contract negotiated separately between Paradise and the occupants of such cabins or dwellings.**

Prior to the Burneys' demand last August, GCC had never requested to negotiate such an agreement or access the PHOA hot water delivery system for cabin heating. The PHOA board proposed terms under which PHOA would grant the GCC lot owners access to the PHOA hot water delivery system in its letter dated November 6, 2016. The Burneys apparently rejected those terms on behalf of the GCC, and offered only to "lend in kind support with shareholder equipment from time-to-time." In essence, they want access to the PHOA hot water delivery system for free or on an equal basis with PHOA members, even though GCC owners are not members of PHOA, are not owners of the PHOA hot water delivery system, have never paid any portion of the cost of its operation and maintenance. It is not clear

whether the GCC ownership as a whole actually played any role in this response. Regardless, the PHOA Board does not accept this counter offer. If GCC is interested in negotiating an agreement in the future, please contact the PHOA Board as directed in the PHOA Board's letter dated November 6, 2016. Terms to be included in any such agreement are set forth in that letter.

Corrections of some of the more notable Waldera Letter misstatements are set forth below:

1. **Page 2, Paragraph 1: "This is not, however, to say that these properties and the dwelling units previously present on them have not historically been heated by prior connection to the PHOA system; they have."**

This statement is false. None of the cabins on the GCC lot have ever been heated with the hot water, or had permission to connect or been connected to the PHOA heating system, with the notable exception that the owners of the two cabins currently under construction attempted last fall to connect to the PHOA hot water delivery system without permission from PHOA, necessitating in part the PHOA decision to close off its hot water pipes located in Grouse Creek Road. PHOA has documented that one of the cabins under construction actually used one of the three outdoor hot water outlets provided by Paradise Resorts under the 1977 Agreement for "culinary and domestic uses" to connect the cabin to the PHOA hot water delivery system without permission. While it is unclear whether the owner or builder of the cabin actually diverted hot water to it, it is clear that the connection was intended for that purpose. The decision to close off the PHOA hot water delivery system's pipes in Grouse Creek Road was also necessitated by the Burneys' improper connection of a toilet and shower to the PHOA hot water delivery system, again without permission from PHOA, which continually drained hot water into the PHOA sewer system in violation of the 1977 Agreement, and in violation of the PHOA water license 63-10560, which specifically prohibits consumptive use of the geothermal water. The Waldera Letter acknowledges that the Burneys' installed the toilet and shower using the hot water, and that such uses were in violation of the PHOA water license 63-10560.

Note that Robert Schaffer, the prior owner of the trailer which was located on the portion of the GCC lot on which the Burneys are now constructing their cabin, submitted an affidavit which is included in the Idaho Department of Water Resources' (IDWR) file for PHOA water license 63-10560. In that affidavit, Mr. Schaffer testified under oath that his cabin did not have access to the PHOA hot water heating system but hoped to someday have it. His affidavit states in pertinent part: "I have about 450 square feet but I **hope to heat my place with hot water some day** and I may want to make it larger." A copy of the affidavit is attached. There are no affidavits in IDWR's file for PHOA water license 63-10560 from any other owners or prior owners of cabins on the GCC lot attesting that they have ever had access the PHOA hot water delivery system or put the geothermal waters appropriated under PHOA water license 63-10560 to beneficial use.

Mr. Schaffer's daughter, Toni Ward, sold the Burneys her parents' trailer and interest in the GCC lot two years ago. The Schaffers paid for the cold water access and sewer access for 6 months out of the year, and used the 3 hot water outlets for culinary and domestic use only. The Schaffers' trailer was heated with a furnace and space heater. The Schaffers acquired their interest in the GCC lot from Mr. Carrie in 1977 or 1978. Other current and prior GCC cabin owners have also confirmed that none of the

cabins on the GCC lot have ever used the geothermal waters for heat or been connected to the PHOA hot water delivery system.

There is no “historic use” of the PHOA hot water delivery system to heat the GCC cabins. Documents in the IDWR file for PHOA water license 63-10560 do not “prove” that the GCC cabins are now, or ever have been, connected to the PHOA hot water delivery system. A physical examination of the portion of the PHOA hot water delivery system located in Grouse Creek Road, and examination of the existing Grouse Creek cabins, will confirm that the cabins are not connected to the PHOA hot water delivery system and never have been. Because the GCC cabins never have been connected to the PHOA hot water delivery system, they have never made any “beneficial use” of the hot water for heating purposes and arguably have forfeited any water right that might have existed under PHOA water license 63-10560.

The fact that the GCC lot cabins have never had permission to use the PHOA hot water delivery system is also apparent from the Burneys’ reliance upon the 1977 Agreement to request that the PHOA negotiate a contract with them in order for them to connect to the PHOA heating system.

2. Page 2, Paragraph 2: “I attach additional records from PHOA water right files demonstrating PHOA’s ongoing and historic hot water service (including heating) to the GCC cabin sites.”

The attached documents do not establish a “historic water service” to the GCC cabin sites for heating purposes. PHOA extended the PHOA hot water delivery system in Grouse Creek Road for the purpose of eventually providing hot water access to the Paradise Pines lots. References to the Grouse Creek Loop are to the PHOA hot water system located in Grouse Creek Road, not to the GCC lot cabins. The three arrows to the right of Grouse Creek Road on the drawing included with the Waldera Letter indicate the three outdoor hot water outlets provided by Paradise Resorts under the 1977 Agreement.

3. Page 3, Paragraph #3: “GCC already possesses the legal entitlement it needs for heating purposes under License No. 63-10560 alone.”

This statement is false, or at least misleading. A right of use under a water license and a right of access to a delivery system constructed and owned by a third party (and located on the third party’s property) are two entirely separate matters. The GCC cabins are not part of the PHOA and have never had a contractual right to access hot water for heating through the PHOA hot water delivery system. IDWR does not have statutory authority to grant access to private property for purposes of accessing a water right. References to the GCC cabins in IDWR’s file for PHOA water license 63-10560 do not grant the GCC cabins a contractual right to use the PHOA’s hot water delivery system.

If GCC is not able to come to an agreement with PHOA for access to the PHOA hot water delivery system, and assuming that GCC has not already forfeited through non-use any right it might have had under PHOA water license 63-10560, the only way for GCC to access the geothermal water resource permitted under PHOA water license 63-10560 in the future would be for it to build its own hot water delivery system. Given that the point of diversion for PHOA water license 63-10560 is located on

PHOA property, the GCC lot owners would first need to acquire a right of way from PHOA to the point of diversion. This would require a separate agreement with PHOA.

4. Page 5, Paragraph 2: "In the meantime, GCC renews its request that the geothermal water service be turned back on to prevent winter damage going forward."

As detailed above, none of the GCC lot cabins have a contractual right to use the PHOA hot water delivery system to heat their cabins or have ever used the PHOA hot water delivery system to do so. The fact that PHOA shut off the water line running under Grouse Creek Road will not in any way "damage" the GCC lot owners as none of the cabins located on the GCC lot are heated through the PHOA hot water delivery system. Because consumptive use of the geothermal resource is not permitted under PHOA water license 63-10560, PHOA cannot allow access to the hot water through the three hot water outlets provided by Paradise Resorts under the 1977 Agreement. Contrary to the statement (Page 4, Paragraph #4) in the Waldera Letter, the three outdoor outlets do not "serve as a back-up delivery mechanism should the buried mainline leak/break" – they *are served by* the buried main line in Grouse Creek Road.

5. Page 5, Paragraph 2: "Because GCC has paid for service, and because heating delivery and use is a property right appurtenant to the GCC cabin sites under License No. 63-10560, GCC does not believe PHOA has a unilateral right to terminate that delivery."

This statement is nonsensical and confuses the PHOA hot water delivery system with the PHOA cold water delivery and sewer systems. The GCC lot owners have never paid for service to the PHOA hot water delivery system; they have paid only to access the PHOA cold water delivery system and sewer system, almost always for no more than 6 months out of the year. Again, Paradise Resorts installed 3 external hot water outlets on the GCC lot under the 1977 Agreement "to be used only for culinary and domestic uses." The 1977 Agreement specifically excludes hot water for cabin heating. Again, the GCC lot owners do not have and have never had access to the PHOA hot water delivery system for cabin heating.

There is no legal basis for the claim that the GCC lot owners have an appurtenant property right to access the PHOA hot water delivery system. The 1977 Agreement, if it is even enforceable against PHOA, was not recorded as an encumbrance against the PHOA property (only as an encumbrance against the GCC property). In any case, it expressly **does not** grant a right of access to the PHOA hot water delivery system; at most, it may have obligated the owner of the system at that time, Paradise Resorts, to *negotiate* toward a contract providing for such access. It did not require Paradise Resorts to actually enter into a separate contract – an "agreement to agree" is not enforceable. "No enforceable contract comes into being when parties leave a material term for future negotiations, creating a mere agreement to agree." *Maroun v. Wyreless Systems, Inc.*, 141 10 Idaho 604, 614, 114 P.3d 974, 984 (2005). *See also Keystone Land Dev. Co. v. Xerox Corp.*, 152 Wn.2d 171, 179, 94 P.3d 945 (2004) (no contract to negotiate a future contract where the "parties did not exchange promises to conform to a specific course of conduct during negotiations, such as negotiating in good faith, exclusively with each other, or for a specific period of time").

Two other inaccuracies stated by the Burneys and their attorney merit correction. First, Waldera has stated that the fact that the application for the PHOA water license 63-10560 referenced a hot water use on "a limited strip of unplatted property South of Grouse Creek Road and terminating on Featherville Road" is proof that the GCC lot has used the geothermal resource for space heating. The GCC lot is entirely located on Grouse Creek Road and is not located on the corner of the Featherville Road and Grouse Creek Road. Paradise Pines subdivision lot # 2 is the above described property. Paradise Pines lot #2 was not, and never has been, part of the GCC lot. Again, "space heating" through the PHOA hot water delivery system has never occurred at any of the cabins on the GCC lot.

Second, the threat to preclude "hot water use on Subdivision lots not listed in the License (including Lot Nos. 47-53) because such expanded use diminishes GCC's priority of use" is without merit. These lots were included in the original PHOA application for PHOA water license 63-10560. That application was filed by PHOA member Harold Johnson (and owner of one of the above lots) in 1987. The cabins on Lot Nos. 47-53 have all made beneficial use of the hot water through the PHOA hot water delivery system since they were constructed over 20 years ago. The fact that the lot references were inadvertently left off of the "Conditions of Approval and Remarks" section of the current iteration of PHOA water license 63-10560 is irrelevant. These lots were included in prior iterations of PHOA water license 63-10560 and are clearly within the described place of use which is stated on the license immediately above the conditions and remarks of the current iteration of the license. Again, the GCC lot cabins have never had access to the PHOA hot water delivery system and as a result have never made any beneficial use of the hot water under PHOA water license 63-10560. The GCC lot owners have no factual basis for claiming "priority of use" over any of the PHOA lots and have forfeited any water right they might have had under PHOA water license 63-10560 through non-use.

Contrary to the repeated statements by the Burneys and their attorney that the Burneys are interested in being "good neighbors," their behavior is anything but neighborly. Mickey Burney in her August 2, 2016 email to the PHOA Board acknowledged that they had "several pieces of equipment, logs, firewood, concrete blocks, propane tank, diesel tank, and other misc. stuff in the easement of the Forest Service." PHOA owns the real property on which the Forest Service has located Grouse Creek Road. PHOA has granted a sixty-six foot easement to the Forest Service for access. PHOA has never granted permission to the Burneys or any of the GCC lot owners to use PHOA property for parking or as a storage facility. As acknowledged by the Forest Service District Ranger Stephaney M. Kerley, "the HOA controls all uses of land within the easement to the extent that they do not interfere with the use of the easement by the Forest Service for the road." Despite repeated request by the PHOA Board that the Burney's not block the road or store equipment and building materials on PHOA property, the Burneys continue to do so.

In addition to their decision to make use of PHOA property without permission, the Burneys have made the following threats if PHOA does not capitulate to their demands for immediate access to the PHOA hot water delivery system:

1. "Put a couple of RVs on our lot" (August 2, 2016 Mickey Burney initial email request for access to the PHOA hot water delivery system);

2. "Turn this matter over to our land attorney in Boise" and sue "PHOA and each board member individually;" "ask for our attorney fees to be paid by the association" (August 24, 2016 Mickey Burney email demand for response to August 2nd demand);
3. "Seek preclusion of hot water use on Subdivision lots not listed in the License (including Lot Nos. 47-53). Pursue a "judicial action for declaratory judgement" and seek "fees and costs against PHOA" (October 20, 2016 Waldera letter);
4. "If I were on the board of the PHOA or a member," "I would also ask my insurance agent if our insurance covered these discrepancies." "Grouse Creek is going to file an injunction and proceed to court." "We will also petition to shut off the illegal use of hot water for those who are not on the license." (December 21, 2016 Mickey Burney email to PHOA membership).

PHOA has made a good faith attempt to negotiate a resolution, and continues to desire reaching a resolution which acknowledges the facts and addresses all of its reasonable concerns. The Burneys' response through their attorney does neither of these things. If GCC wishes to negotiate in good faith, the PHOA Board suggests that it contact the Board directly to discuss the terms set forth in the Board's November 6, 2016 letter.

Sincerely,
PHOA Board of Directors

Enclosures: PHOA Board of Directors letters to Mickey and Dave Burney, dated September 6 and 23, 2016, and November 6, 2016; Robert Schaffer Affidavit, dated September 4, 1997; Forest Service District Ranger Stephaney Kerley letter to PHOA, dated September 22, 2016.

September 6, 2016

Dear Mr. and Mrs. Burney,

The Board of Directors (Board) of the Paradise Homeowner's Association (PHOA) is writing in response to your emails dated August 2, 2016 and August 24, 2016 requesting that the PHOA provide you with hot water to heat the cabin you intend to build on the Grouse Creek Homeowner's Association (GCHOA) lot located on Grouse Creek. The Board met on September 3, 2016 to review the documents you provided and to discuss your request.

One of the documents you provided was the 1977 agreement between the GCHOA and Paradise Resorts, Inc. (1977 Agreement) in which, among other things, Paradise Resorts, Inc. expressed an intent to negotiate a future agreement with GCHOA at a later date to provide it with hot water for heating purposes. The 1977 Agreement does not appear to have been recorded.

According to filings obtained from the Idaho Secretary of State, the PHOA was not created until May 2, 1980. Paradise Resort, Inc. was administratively dissolved on February 2, 1998. Members of the Board are not aware of any documents which would indicate that the PHOA is a successor or assignee of Paradise Resort, Inc. Moreover, the relevant party to the 1977 Agreement is GCHOA. Even assuming PHOA were a successor or assignee of Paradise Resorts, Inc. and assuming that PHOA had an enforceable obligation under the 1977 Agreement (and we do not make either assumption), a contract for the provision of hot water would have to be negotiated with GCHOA, not an individual cabin owner on the GCHOA lot. If there is no legally binding commitment on the PHOA to provide GCHOA hot water for heating purposes, your request will have to be presented to our entire membership for consideration.

The Board also reviewed the three existing water licenses under which PHOA has rights to use the geothermal waters. The three licenses are: Water Right 63-10560 (priority date 11/18/1987, usage: heating), 63-12316 (priority date 02/06/1996, usage: changing room and heating) and 63-31526 (priority date 07/17/2002, usage: pool and recreation). It is unclear whether the GCHOA lot is included as a benefitted property under Water Right License 63-10560.

While the original application for Water Right License 63-10560 included "unplatted property south of the Grouse Creek road," it is unclear that this was a reference to the Grouse Creek Homeowner's Association lot. The plat maps included with the application, as found in the Idaho Department of Water Resources (IDWR) file for Water Right License 63-10560, do not include the Grouse Creek Homeowner's Association lot.

If you have additional documents which are relevant to the above, please provide them for our review. We are attempting to research and resolve issues related to your request as quickly as possible but cannot jeopardize the PHOA water rights by granting the GCHOA water rights which exceed the usage allowed under our existing water licenses.

Thank you.

Sincerely, Board of Directors, Paradise Homeowner's Association

September 23, 2016

Dear Mr. and Mrs. Burney,

The Board of Directors (Board) of the Paradise Homeowner's Association (PHOA) is writing in follow up to its letter to you dated September 6, 2016 and in further response to your emails dated August 2, 2016 and August 24, 2016 requesting that the PHOA provide you with access to the PHOA hot water delivery system to heat the cabin you intend to build on the lot owned by Grouse Creek Cabins, Inc. The PHOA Board is a committee of volunteers who like you enjoy coming to Pine to relax and enjoy the wonderful scenery. Many of us also count you as our friends and are disturbed by the manner in which issues have been raised and discussed. The Board has expended a fair amount of time and effort to give thoughtful attention and consideration to your request and to discuss issues you helped us identify related to the PHOA water licenses.

As discussed in the PHOA September 6th letter, the 1977 Agreement is between the Grouse Creek Cabins, Inc. and Paradise Resorts, Inc. (Paradise Resorts). The PHOA is not a successor or affiliate of Paradise Resorts. Paradise Resorts was administratively dissolved in 1998. Paradise Resorts never provided the Grouse Creek Cabins with geothermal waters for cabin heating purposes. At best, the 1977 Agreement expressed an intent, on the part of Paradise Resorts to negotiate a future agreement with Grouse Creek Cabins at some later date to provide it with hot water for heating purposes. Neither the PHOA nor the geothermal water licenses owned by PHOA existed at the time of the 1977 Agreement. While the PHOA has continued to provide the Grouse Creek Cabin lot with domestic water and sewer from the PHOA systems, a practice started under the 1977 Agreement, hot water for heating has never been provided.

Your communications with the Board raised possible problems with the PHOA water licenses. The PHOA will be taking additional action to resolve issues pertaining to its water licenses. Prior to resolution of those issues, and verification that the PHOA is able to continue to provide hot water to all of its members, it would be premature for the PHOA to enter into a contract with a Grouse Creek Cabin lot owner to provide access to the PHOA geothermal delivery system for heating purposes. After the Board has resolved its water license issues and determined that there is sufficient water to meet all requirements of the PHOA and the members of the PHOA decide that they are amenable to providing hot water to the Grouse Creek cabins, an agreement on that matter will be negotiated with Grouse Creek Cabins, Inc., the legal owner of the single lot on which all of the Grouse Creek cabins are located.

The Board is interested in entering into an agreement with Grouse Creek Cabins, Inc. pertaining to domestic water and sewer and will be in contact with the Grouse Creek Cabin board to discuss the terms

Thank you.

Sincerely, Board of Directors, Paradise Homeowner's Association

SEND VIA CERTIFIED MAIL 7015 0040 0001 7649 0967
RETURN RECEIPT REQUESTED

November 6, 2016

Jimmy Bennett
1348 S. E. Yuba
Mountain Home, Idaho 83647

Mickey Burney
3410 Ridgeline Drive
Kimberly, Idaho 83341

Twyla J Anderson, registered agent
851 E Garfield Avenue
Glenns Ferry, Idaho 83623

Dear Grouse Creek Cabins, Inc.,

It has come to the attention of the Paradise Homeowners Association (PHOA) board that one or more cabins under construction on the Grouse Creek Cabin Inc.'s parcel have connected to the PHOA hot water delivery system without the consent or permission of PHOA. Additionally, a toilet and shower have been installed by one of your shareholders in which water is delivered through the PHOA hot water delivery system. The hot water diverted to the toilet / shower is allowed to continually flow into to the PHOA sewage drain field.

PHOA has not granted permission for either of these uses. These uses are in violation of the 1977 Agreement between Paradise Resorts and Grouse Creek Cabins under which the PHOA has continued to allow the Grouse Creek Cabins to access the PHOA cold water delivery system and the PHOA sewer facilities, and are also in violation of water license 10560 which is owned by the PHOA. The 1977 Agreement specifically states "[t]he hot water is to be used only for culinary and domestic uses and shall, in no event, be piped into any cabin or dwelling, nor shall the same be used in such a manner that it may run into the sewer line." The PHOA water license specifically prohibits the consumptive use of the hot water. These uses must cease immediately and to ensure that they do cease immediately access to hot water by Grouse Creek Cabins has been terminated.

Grouse Creek Road and Paradise Road have been encroached on and periodically blocked by one of your shareholders for months. The situation is escalating. Although the PHOA has granted an access easement to the Forest Service for Grouse Creek Road, the easement is on property owned by the PHOA. Construction trailers used by one of your members are parked on Paradise Road, a private road, owned by PHOA. The PHOA board requests that you instruct your members to cease parking on and blocking access to Grouse Creek and Paradise roads and to immediately repair all damage caused to the roads.

One of your shareholders, Dave and Mickey Burney, has requested that the PHOA allow them to connect to the PHOA hot water delivery system in order to heat the cabin that they are constructing. The basis for the request is the 1977 Agreement between Paradise Resorts and Grouse Creek Cabins which states, "[i]t is the intent of Paradise (Resorts), at some time in the future, to make the hot water available to Grouse Creek for the purpose of heating cabins and dwellings; at that time there will be a contract negotiated separately between Paradise Resorts (Resorts) and the occupants of such cabins or dwellings."

As has been explained to the Burneys, PHOA is not a successor or assignee of Paradise Resorts and does not consider the 1977 Agreement binding on it. Despite the fact that the PHOA is not bound by the 1977 Agreement, PHOA is willing to negotiate a contract with the Grouse Creek Cabins, Inc. to provide its shareholders with access to the PHOA hot water delivery system. Negotiation of that agreement cannot occur until Grouse Creek Cabins has corrected the above issues.

After confirmation that the above issues have been corrected, the following is a non-exhaustive list of items for inclusion in the PHOA – Grouse Creek Cabins agreement to be negotiated:

1. Each of the Grouse Creek Cabins shall pay to PHOA that amount which is charged monthly by the City of Glenns Ferry for cold water and sewer access. This amount will be adjusted annually in keeping with the published rates for the City of Glenns Ferry.
2. Grouse Creek Cabins, Inc. shall cause its lot to be surveyed and staked so that its members are made aware of its lot boundaries. Grouse Creek Cabins shall ensure that its members cease encroaching on property owned by PHOA, including Grouse Creek road or the land owned by PHOA on either side of Grouse Creek road.
3. Grouse Creek Cabin, Inc. shall cooperate and assist PHOA with obtaining any further water rights determined necessary by the PHOA board, and pay for its proportionate share of any such costs.
4. The three hot water outlets allowed by Paradise Resorts to be located on the Grouse Creek Cabin lot under the 1977 Agreement between Paradise Resorts and Grouse Creek will be removed. Only non-consumptive use of the hot water is allowed under the PHOA water license 10560. Consumptive use of the hot water is in violation of water license 10560.
5. Grouse Creek shall make a capital contribution to the PHOA for the hot water delivery system developed, maintained and paid for by the members of the PHOA. The PHOA board proposes that the amount of this contribution, per Grouse Creek cabin, should be negotiated recognizing that the difference in the values of the cost of an undeveloped lot in the PHOA subdivision is significantly higher than the value of a share in Grouse Creek Cabins, Inc., largely because the lots in PHOA have access to the PHOA hot water delivery system for heating purposes. Currently, lot 15 of the PHOA is listed for \$45,000. PHOA lot 15 consists of approximately .25 acres. Grouse Creek Cabin's, Inc.'s lot consists of 1.82 acres, or roughly .25 acres per each of the seven parcels intended to be subdivided under the original 1977 agreement between Grouse Creek Cabins and Paradise Resorts.
6. Grouse Creek Cabins shall pay for their proportionate share of future maintenance, repair and development of the PHOA hot water delivery system, the PHOA cold water delivery system and the PHOA sewage facilities.
7. Grouse Creek Cabins shall agree that in the event of hot water shortage, the PHOA shall have the right to reduce hot water supplied to the Grouse Creek Cabins.
8. The Grouse Creek Cabins shall use and abide by the same restrictions on the use of the hot water as imposed by the PHOA on its members, including the use of restrictors limiting access to 5 gallons per minute.

If Grouse Creek Cabins, Inc. is interested in negotiating an agreement regarding the PHOA hot water delivery system, please contact:

PHOA Board of Directors
C/O Ray Ligenza , PHOA Water Committee
1088 E. Paradise Drive
Pine, Idaho 83647

Sincerely,

Paradise Homeowner's Association Board

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF WATER RIGHT)
LICENSE NO. ~~63-10580~~ IN THE NAME OF)
PARADISE HOMEOWNES' ASSOCIATION, INC.,)

AFFIDAVIT

Licensee.)

STATE OF IDAHO)
COUNTY OF Elmore) SS.

1. Robert Sheaffer being duly sworn, under oath, deposes and states, as follows:

1. I am the owner of Lot(s) Parcel 7 of Willis Carrie Paradise Subdivision ("Subdivision")
in Elmore County, Idaho, which I have owned since July 1979. I am
over the age of eighteen years and competent to testify to the matters set forth below.

2. I am familiar with the system which distributes hotwater for heating, domestic and recreation
purposes from the springs situated on lands immediately east of the Subdivision and now owned by the
Paradise Homeowners Association, Inc., the holder and license of Water Right License No. _____.

3. I have about 450 square feet but I hope
to heat my place with hot water some day
and I may want to make it larger.

DATED: 9/4/97

Robert Sheaffer
Signature of Owner(s)

SUBSCRIBED AND SWORN TO before me this 4th day of Sept, 1997.

William
Notary Public for Idaho

Residing At Hampton

Commission Expires: 8/31/2000

MICROFILMED

JAN 12 1998



United States
Department of
Agriculture

For
Service

Mountain Home Ranger District

3080 Industrial Way
Mountain Home, ID 83647
208-587-7961
TDD: 800-877-8339

File Code: 2730

Date: September 22, 2016

Mr. Randy Fowers
1446 E Green Haven St.
Meridian, Idaho 83646

Dear Mr. Fowers;

I have reviewed the attached easement dated February 5th, 1980 granted to the United States of America by Paradise Resort, Incorporated.

As the representative of the owners of the servient estate, the HOA controls all uses of land within the easement to the extent that they do not interfere with the use of the easement by the Forest Service for the road. I believe Clause #3 adequately describes this.

If you should have any more questions, please feel free to contact me at 208-587-7830.

Sincerely,

Stephaney M. Kerley

STEPHANEE M. KERLEY
District Ranger

cc: Josh Newman, Jim Case



EASEMENT

RECORDED TO CURRENT LEGAL DESCRIPTION

EASEMENT DEED

THIS DEED, dated this 5th day of February, 1977, by and between PARADISE RESORT, INCORPORATED, a corporation organized and existing under the laws of the State of Idaho, and fully authorized to do business in the State of Idaho, hereinafter called the Grantor, and the UNITED STATES OF AMERICA, hereinafter called the Grantee,

WITNESSETH, that the Grantor, for and in consideration of one Dollar (\$1.00), the receipt of which is hereby acknowledged, does hereby grant and convey unto the Grantee and its assigns as exclusive easement for a road, including an existing road, to be located, constructed, reconstructed, improved, used, and maintained over, upon, along, and across the following described premises situated in the County of Elmore, State of Idaho, to-wit:

A strip of land 66.0 feet in width traversing the following described property:

Township 3 North, Range 10 East, Boise Meridian
Section 33, lot 4 and SW 1/4

The said strip being 33 feet in width on each side of a centerline as located and to be constructed on the ground, with as much additional width as required for adequate protection of cuts and fills, the said centerline being more particularly described as follows:

Commencing at the North one-quarter corner of Section 33, Township 3 North, Range 10 East, Boise Meridian, Elmore County, Idaho,

thence; S. 6°06'24" E., 3,181.64 feet to the point of intersection of the centerline of the Featherville Road with the centerline of GROUSE CREEK ROAD; said point also being the TRUE POINT OF BEGINNING OF THE EASEMENT;

thence leaving said centerline of Featherville Road and following the centerline of said Grouse Creek Road the following courses and distances:

Bearing	Tangent Distance in Feet	Curve L-R	Central Angle	Radius in Feet	Long Chord Distance in Feet
S. 77°39'17"E.	127.72				
S. 71°13'03"E.	147.79	R	6°26'14"	853.57	95.83
S. 58°51'08"E.	235.33	R	12°21'55"	923.12	198.84
S. 53°41'57"E.	601.24	R	5°09'11"	1,559.80	140.24
S. 53°01'13"E.	262.02	L	15°15'38"	421.62	111.97

to a point on the Southerly boundary of the NW 1/4 of said Section 33 which point bears S. 89°17'35" E., 688.39 feet from the Southwest corner of the said NW 1/4, Section 33, said point also being the POINT OF ENDING OF THE EASEMENT.

The boundary lines of said right-of-way shall be prolonged or shortened to begin on and end on and conform to the property lines.

Subject to the existing rights of Featherville Road.

Totals: Length - 1,921.80 feet Area - 2.91 acres

Do not...
DRR