

Webster, Clay

From: Zach Latham [zach.latham@brockwayeng.com]
Sent: Thursday, May 07, 2015 4:57 PM
To: Palmer, Cherie; Webster, Clay
Cc: 'Robert Root'
Subject: RE: Root

Cherie and Clay-

Mr. Root's signed amended WSB Rental application was sent via FedEx to Clay this afternoon, you should receive it by 10:30 tomorrow morning. Thank you.

Zach Latham

Hydrologist
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All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.

From: Zach Latham [mailto:zach.latham@brockwayeng.com]
Sent: Thursday, May 07, 2015 2:51 PM
To: cherie.palmer@idwr.idaho.gov
Cc: 'Robert Root'
Subject: RE: Root

Cherie-

Per our telephone conversation today, please see the signed, amended Root Rental Application. Mr. Root requests this application be processed by IDWR even if the dates listed on question 3C. are not able to be met.

It's my understanding that with this amended application, processing and approval of the request can continue. Please let me know if you need any additional information, I will mail you the original copy on Monday of next week. Thank you.

Zach Latham

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From: Zach Latham [mailto:zach.latham@brockwayeng.com]
Sent: Monday, May 04, 2015 11:25 AM
To: 'Palmer, Cherie'
Cc: 'gary.spackman@idwr.idaho.gov'; shelley.keen@idwr.idaho.gov; watermanager@cableone.net;

Subject: RE: Root

Cherie-

To review, surface water right 37-153C and ground water right 37-2644D were decreed in late September of 2010 (attached) for irrigation uses on the Jones Trust Property in Greenhorn Gulch midway between Hailey and Ketchum, ID. The forfeiture clock was reset on the date of decree.

1. These water rights were ACCEPTED by the water supply bank on July 30th 2014, indicating that IDWR confirmed the validity of the water right at that time. Further, the forfeiture clock was tolled on the acceptance date.
2. On March 25th 2015, our office applied to rent ground water right 37-2644D on a property to the east in the East Fork of the Wood River drainage.
3. Both the lease and rental POD's are in the Ketchum Zone per IDWR's January 29th 2015 Water Supply Bank interim policy.
4. Because both the surface water right and the ground water right POU's are on the same area, the water rights are assumed to be stacked and you were concerned that rental of the ground water without a companion rental of the surface water would cause an expansion of use. Based on our office's experience in the Wood River Valley and in dealing with clients in the immediate vicinity, Our office has direct experience since prior to 1995 regarding Greenhorn creek and its use or lack of use in this vicinity. Based on that evidence, we voiced our opinion that the surface water is not readily available for diversion based on the un-reliable discharge at the mouth of the Greenhorn Creek and the fact that no diversion system has been in place for many years.
5. You noted in telephone correspondence that IDWR needed some evidence to support the un-reliability of the creek, thus making the ground water the primary source of irrigation for the property.
6. On April 6th, 2015, the District 37 Watermaster, Kevin Lakey sent us an email stating; "Zach and Cherie, 37-153C is deliverable up to around April 15th to May 1st. After that, Greenhorn Creek is usually dry and does not reach the main Big Wood channel. Because of this, the ground water rights act as primary sources of irrigation and I don't believe there would be a "double dipping" or expansion of use."
7. On April 15th 2015, the District 37 Watermaster, Kevin Lakey, made a site visit to the point of diversion associated with the surface water right 37-153C and he stated to us in an email, "Zach and Cherie, I was finally able to make an on-site inspection for a POD for water right 37-153C. At this time, there is no delivery system for that water right out of Greenhorn Creek."

First, any non-use of the groundwater right is completely irrelevant in this case, since 5 years have not elapsed since the decree date, and in any event the forfeiture clock was tolled on July 30, 2014. Second, I find it hard to believe that IDWR will not accept and or believe the findings of the District 37 Watermaster relative to the availability or lack thereof of water under the surface water right. I also find it very hard to believe that IDWR would accept a water right for lease and then question the validity of the very same water right when a rental request is filed.

I am requesting you move forward with processing the rental of 37-2644D for the applicant as the reasons you stated for denial are vague and are directly contradictory to the District 37 Watermaster's testimony relative to non-delivery of the surface water right. Idaho State Statutes and Administrative Rules don't allow IDWR to deny applications because they are "uncomfortable" or "can't reach a conclusion" with regards to a rental request. In light of direct observations and testimony by Mr. Lakey, the rental application should be approved.

Please let me know if you have any additional questions, thank you for your time.

Zach Latham

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From: Palmer, Cherie [<mailto:Cherie.Palmer@idwr.idaho.gov>]

Sent: Friday, May 01, 2015 1:40 PM

To: Zach Latham

Subject: Root

Zach,

I just tried to reach you at 308-0739 but was unable to leave a message because the voicemail hasn't been set-up. So I am catching up with you via email. Clay and I reviewed the Root rental application and had a lot of conversations with staff about the water rights. Unfortunately we weren't able to reach a conclusion regarding the unstacking of the surface water and ground water, we just didn't have enough information. Since we were uncomfortable with the possible enlargement issue, the Root application was denied this week.

Basically, we had no information telling us that the ground water has been used at all. We could tell that there was some irrigation back in 2010 (pasture land?) on this property but, again, we don't what source of water was used at that time. If you want to discuss further please let me know.

Cherie