

Merritt, Allen

From: Merritt, Allen
Sent: Wednesday, November 12, 2014 7:57 AM
To: 'Gary Slette'
Cc: Charles E. Brockway; mpietsch@MARKETRON.COM; 'Jack Bariteau'; Tim Graves; Robin Moore; 'Lawrence Schoen'; 'tbergin@co.blaine.id.us'
Subject: RE: Flying Heart Application

Gentlemen,

In light of the apparent agreement of the parties to vacate the conference today and reschedule the pre-hearing conference to December 3 at 2 p.m. please accept this e-mail as the notice to accomplish this task.

As before if you wish to participate by phone.....

Phone call 215-446-0193

Part code 675676#

I will look forward to the conference on Wednesday December 3 at 2:00 pm.

Allen Merritt
IDWR Southern Region Manager

From: Gary Slette [mailto:gslette@rsidaholaw.com]
Sent: Tuesday, November 11, 2014 8:36 AM
To: Merritt, Allen
Cc: Charles E. Brockway; mpietsch@MARKETRON.COM; 'Jack Bariteau'; Tim Graves; Robin Moore
Subject: RE: Flying Heart Application

Allen,

Good morning. Blaine County and the Flying Heart representatives met on November 4, and have expressed a desire to continue a dialogue. Please see the emails below. Would it be possible to vacate the pre-hearing conference scheduled for tomorrow and reset it for Wednesday, December 3 at 2 p.m.? If that time is not convenient for you, I think we can work around it, but everyone seemed to be available on that one day. I hope the same is true for you!!

Thank you for your consideration. A Reply to All would probably be the best way to respond.

Regards,

Gary

From: Jack Bariteau [mailto:jack@waypointsunvalley.com]
Sent: Monday, November 10, 2014 4:21 PM
To: Tim Graves
Cc: Gary Slette; Charles E. Brockway; mpietsch@MARKETRON.COM
Subject: Re: Flying Heart Application

Thanks Tim. We will connect with Alan Merritt at IDWR to see if this will work for his schedule.

Jack

On Mon, Nov 10, 2014 at 2:22 PM, Tim Graves <tgraves@co.blaine.id.us> wrote:

The 3rd works for us. Preferably in the afternoon. 2pm would be ideal.

Timothy K. Graves

Chief Deputy Prosecuting Attorney

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From: Gary Slette [<mailto:gslette@rsidaholaw.com>]
Sent: Monday, November 10, 2014 11:44 AM
To: Tim Graves
Cc: 'Jack Bariteau'; Charles E. Brockway; 'mpietsch@MARKETRON.COM'
Subject: RE: Flying Heart Application

Tim,

What were you able to find out about the December 3 date for the pre-hearing conference continuation? I would like to advise Allen Merritt today if possible should that date work for you and Larry.

Thanks,

Gary

From: Gary Slette
Sent: Friday, November 07, 2014 12:31 PM
To: 'Tim Graves'
Cc: 'Jack Bariteau'; 'Charles E. Brockway'; 'mpietsch@MARKETRON.COM'
Subject: RE: Flying Heart Application

Tim,

The Thomas right had a new POD added from the river because they were not able to secure their water with any degree of reliability. They have installed a pump and pipeline, and with that degree of reliability, I'm certain that they will continue to divert in that fashion. They are not a part of this application, and I'm certain they do not want to be, although they are supportive of our efforts. The good news is that given the close proximity of Flying Heart's discharge to the river and the Thomas POD, there will be an inflow into the river that would about equal their extraction if our permit is approved.

As to the CM issue, I a non-consumptive right would not be impacted because the whole idea behind CM is to regulate consumptive water users. Whatever the IDWR does in the future is something that we can't speculate on, but I really don't see that changing, and I certainly have not heard anything to the contrary in my dealings with the department.

Gary

From: Tim Graves [<mailto:tgraves@co.blaine.id.us>]
Sent: Wednesday, November 05, 2014 5:50 PM
To: Gary Slette
Subject: RE: Flying Heart Application

Gary,

On the Thomas right, it was Larry's and my understanding from yesterday's presentation that the 2.5 cfs Thomas right would now be delivered via the connected stream improvements through Flying Heart. Thomas would relinquish his surface diversion from the BWR, unless it was necessary to re-open that diversion in times

of low flows. This raised the questions of whether Thomas needs to be an applicant since his source of water would now apparently be GW and not SW, and how the re-opening of the Thomas diversion in low flows would work administratively. I think some clarification is needed on this aspect of the application. Is there no change to the Thomas diversion/right except the connection and addition of the Flying Heart GW?

The big question for IDWR is going to center around conjunctive management and whether the no injury standards of SW management will similarly apply to GW management. If, as you suggest, IDWR has no issue with a small drawdown for other GW users nearby, a transfer of GW into SW, and a delayed return of that GW down gradient, then there is not much left of the protest. Conversely, if IDWR changes its tact on GW injury, it will be difficult for the application to be approved. I don't know if it is possible to get a pre-hearing determination or narrow down the extent of the issues to be heard, but I believe this to be the pivotal issue going forward.

Larry was fine with moving the pre-hearing conference to give us more time to discuss potential resolution, but he too will be out of town the week of Thanksgiving and asked that we move it to the first week of December (1st, 3rd, 4th).

Tim

Timothy K. Graves

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From: Gary Slette [mailto:gslette@rsidaholaw.com]
Sent: Wednesday, November 05, 2014 9:41 AM
To: Tim Graves
Subject: Flying Heart Application

Good morning Tim,

Thanks for being at the meeting yesterday. I've spoken with Ned Williamson this morning, and we will be providing him with an analysis of the effect of the proposed extraction on Hailey's Northridge well which I understand will show negligible, if any, impact with regard to drawdown.

With regard to the well drawdown issue, it appears that even at full extraction, the maximum effect on a well located 200 feet away is only .2 foot, or two inches. It seems to me that the "reasonable pumping level" requirement of Idaho Code 42-226, and the cases that have interpreted that section, would support the HOA's application. Senior groundwater appropriators are protected only as to the level of reasonable pumping levels, so if the static water level in a well dropped two inches, I don't think anyone could say that would create an unreasonable pumping level. (Presumably, anyone's pump is located many feet below the static water level in any event.)

I understood Larry Schoen's position with regard to the coming greater regulation of ground and surface water rights through conjunctive management, but I am of the opinion that a non-consumptive groundwater right will not be impacted by priority regulation of consumptive groundwater rights. Chuck and Will have been working to make certain that the reduction in pond area will decrease evapotranspiration losses in the system to justify the non-consumptive nature of this application.

Finally, and as you suggested, the HOA has asked Chuck to look at a reduced diversion rate to see if something different might work. I don't know if I'm correct or not, but it appeared to me that there may have been a misperception about the downstream neighbor's water right. Larry Schoen kept saying that the HOA has 3.0 cfs that the springs are currently producing, and the 2.5 cfs of Perry Thomas, so why isn't this application for only 4.5 cfs? The Thomas water right is pumped directly from the Big Wood River at a point downstream of the Flying Heart property. His water does not run through the HOA system, so there is no 2.5 cfs that we are using as a part of the HOA's stream and pond system. If I'm wrong in what I thought he was saying, I will stand corrected, but I wanted you to know that the Thomas water right is not involved in any way in this matter. The Thomases are supportive of this application because they are interested in seeing the successful river reconnection efforts of Chuck and Will come to pass.

Chuck and/or Jack will prepare a response as to the unique nature of this application with regard to the request made by you and Larry. I sense there is still an avenue for potential resolution, and with that in mind, do you think we should jointly ask Allen Merritt for a two week extension on the pre-hearing conference scheduled for next Wednesday? I'm going to run that idea past Jack to see what he thinks, but I thought I would float it to you to get your thoughts.

Regards,

Gary

Gary D. Slette

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