

Music, Vicky

From: Lester, Steve
Sent: Friday, March 14, 2014 8:02 AM
To: Keen, Shelley; Saxton, Craig; Music, Vicky
Subject: RE: paradise pines field exam finding

Hi All:

An interesting case. I like Shelley's conclusions supporting limited use of stub-in for heating from surface water source. Probably won't run into this much so our default could be to consult for each situation. That will prevent "mission creep" syndrome that happens despite our best intentions. If it sounds good to Shelley & Craig, I'll advise Western staff to use that approach, making sure we consult before any approvals are issued.

Shelley made a good point about volume in this case – best bet would be to follow the lead of modified license he noted.

We have a winner this time Paradise once again makes it mark on what we do! Thanks for your helpful comments.

Steve

From: Keen, Shelley
Sent: Thursday, March 13, 2014 1:53 PM
To: Music, Vicky; Saxton, Craig
Cc: Lester, Steve
Subject: RE: paradise pines field exam finding

That works for me. One word of caution, though. Many years ago we licensed the first heating right for Paradise using the stub-in practice. Because the homes weren't built yet, we had to estimate the square-footage of the homes that might be built so that we could determine a heating volume. We decided to use the average of the existing homes. A few years later, they complained because the homes that were built were much bigger than anticipated, and they needed more volume than we had licensed. If I remember correctly, we eventually modified the license. I am not sure what the answer is, but give it some thought as you are determining a volume for the heating use.

Shelley

From: Music, Vicky
Sent: Thursday, March 13, 2014 1:21 PM
To: Saxton, Craig; Keen, Shelley
Cc: Lester, Steve
Subject: RE: paradise pines field exam finding

Yes,

I apologize for the omission that the source is 2 hot springs, that already heat approximately 45 homes in the subdivision. The facts are otherwise pretty straight forward and as I described. I considered the guidance Craig cited before asking, but felt that this situation was not addressed in the Department guidance documents.

I would like to go with Shelley's rationale, because Steve and I agree that licensing this heating use based on the stub in seemed consistent with the logic of Memo 18, even though the memo was silent on stub ins for heating use for a home. There is no injury expected. So if that is fine with all, then that is what I will do.

Thanks.

Vicky M

From: Saxton, Craig
Sent: Thursday, March 13, 2014 11:47 AM
To: Keen, Shelley; Music, Vicky
Cc: Lester, Steve
Subject: RE: paradise pines field exam finding

I like Shelley's answer better.

Thanks for the input.

c

From: Keen, Shelley
Sent: Thursday, March 13, 2014 11:39 AM
To: Saxton, Craig; Music, Vicky
Cc: Lester, Steve
Subject: RE: paradise pines field exam finding

Vicky and Craig,

I think Craig's conclusion is certainly defensible. I have been thinking, though, that we might want to license the heating use in the stubbed-in lots as a practical matter. The stub-in practice as applied to domestic uses is intended to keep us from having to process a new application each time another lot is sold. The same logic applies to the heating use in this case. Furthermore, since the source of water for heating is surface water, it probably would not injure anyone to allow it. If the heating water is not diverted and used, it probably ends up in the creek. If it is diverted and used, it probably ends up in the creek a little further downstream without bypassing any other points of diversion. If so, nobody is injured by applying the stub-in practice to the heating use in this instance. I think my analysis would be different if the source were ground water or if the increase in diversions for heating in the future would deprive intervening junior surface water users of water they had become accustomed to receiving.

Let me know if we should talk it over. My response may not be based on a complete set of facts.

Shelley

From: Saxton, Craig
Sent: Thursday, March 13, 2014 11:16 AM
To: Music, Vicky
Cc: Keen, Shelley; Lester, Steve
Subject: RE: paradise pines field exam finding

Hey Vicky,

I haven't ran across this situation before, but unfortunately I think the answer is going to be that the stub in practice, doesn't apply to heating use. Here is what I found.

Page 2, Second paragraph from the bottom of **Application Processing Memo #22** essentially says that Heating use should not be considered as a part of a 42-111 domestic use:

A reference to section 42-111, Idaho Code, indicates that the heating of dwelling houses comes within the meaning of "domestic purposes". However, since the 1922 court case from which that statement was taken, the interpretation of the domestic use has been narrowed considerably. Heating should be designated as a unique use.

Then Page 2, last line of the 1st paragraph under the Stub-in Practice For Subdivisions in heading in Application Processing Memo #18, provides:

Stub-in Practice for Subdivisions

For unincorporated cities and other small communities that did not qualify as municipalities, and therefore could not obtain a municipal water right, the Department could only license water rights for domestic and associated irrigation, commercial and other uses based on actual diversion and application of the water to beneficial use accomplished during the authorized development period of the permit. The Department provided some flexibility in determining beneficial use for domestic purposes in subdivision developments under the "stub-in" practice. Under the "stub-in" practice, the Department issued water right licenses for domestic purposes in subdivisions if the water diversion and distribution systems were in place, including a service line to each lot, even if water had not yet been put to beneficial use on all the buildable lots. The Department's stub-in practice recognized that the full build out of a subdivision can take longer than the number of years the Department could authorize for completion of a water appropriation project. By issuing a water right license for domestic uses that were yet to be completed, the Department avoided a parade of individual water right filings as each lot was sold. The stub-in practice also helped subdivision developers obtain financing by providing some assurance to lending institutions that a development project would not fail due to water right availability issues that may have arisen as the individual lots were built out over time. The Department's stub-in practice was applied to each home that would individually qualify as a domestic use as defined in Section 42-111(1)(a), Idaho Code.

Since "heating" isn't considered part of a 42-111 domestic use, and the stub-in practice is only applicable to 42-111(a), then I interpret this as meaning we can't include sub-ins as development for heating use.

Let me know if you interpret this differently. Maybe Shelley has had a different experience so I CC'd him.

Thanks,

C

From: Lester, Steve
Sent: Thursday, March 13, 2014 10:54 AM
To: Music, Vicky; Saxton, Craig
Subject: RE: paradise pines field exam finding

One correction: source is hot spring, not low temp geothermal (= ground water).

From: Music, Vicky
Sent: Thursday, March 13, 2014 9:46 AM
To: Saxton, Craig

Cc: Lester, Steve

Subject: paradise pines field exam finding

Good morning Craig!

I conducted a field exam last year in Paradise Pines, Elmore Co, between Pine and Featherville. They have a low temp geothermal system in place for heating of homes, pools, etc. There are 4 lots subdivided after the main subdivision that have been stubbed in for internal domestic cold water and for the hot water for heating, but no homes have been built. So, per Department guidance, admin memo 18, I can recommend that b/u was found for the internal domestic permit for cold water. However, the memo does not cite guidance for low temp geothermal use. It would seem that the same rationale would extend to a stub in for hot water in a home, but I am asking you to be sure.

Thanks!

Vicky Music
Sr. Water Resource Agent
Western Region
208.334.2190

Please reply that you received this message.