



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 6, 2014

KIRK EBERHARD
PO BOX 251
CARMEN ID 83462-0251

RE: Water right inquiry

Dear Mr. Eberhard,

Morgan Case asked me to respond to the questions/concerns you asked in an e-mail to her on November 29, 2013. I have listed the questions below along with a response for each.

Question 1: Do we have a domestic water right to irrigate 0.5 acres from our pond?

In the letter sent to you dated January 23, 2002, Shelley Keen referenced a draft policy memorandum that included guidance on the Domestic exemption in relation to ponds. On February 28, 2003, that guidance memo was finalized and the language is very similar to the draft Shelley Keen referenced:

A water right permit is not required to construct and use a pond that meets the statutory requirements for exemption for domestic uses (Sections 42-111 and 42-227, Idaho Code). If the pond is excavated and fills naturally with ground water or is constructed in any manner and is filled by pumping ground water, the total use of the pond and the other domestic uses exempted from permitting must not exceed 13,000 gallons per day for uses under part (1)(a) of Section 42-111, Idaho Code or 0.04 cubic feet per second and 2,500 gallons per day for uses under part (1)(b). Determination of the water use for a pond should take into account the fill rate of the pond (for ponds not filled naturally with ground water), evaporation and seepage from the pond, flow-through water to refresh the pond, and any other water used or discharged from the pond. Evaporation should be based upon a typical maximum daily evaporation rate rather than an annual average rate.

Aerial photography indicates that there are two ponds located on your property on the south side of Carmen Creek with a combined total of 0.2 acres of surface area. My response is predicated on the assumption that both ponds are excavated into the water table and fill with ground water. In addition, I was able to find a 1986 well log in your name that fits the legal description of your property. I was not able to find a water right associated with this well. I will make the assumption that the well is used for internal culinary use. Section 42-111(3), Idaho Code, does not allow for stacking of domestic water rights. This means we have to evaluate use of the well for internal domestic use in conjunction with use of the ground water from the pond for external domestic use, to determine if the total use falls within the limitations set by 42-111.

Using the spreadsheet designed for use in conjunction with the above mentioned memo, I calculated the maximum daily use of water for domestic use which includes pond evaporation losses, internal domestic use, and ½ acre of irrigation, to be 6444 gallons. This is within the 13,000 gallon per day limit described by section 42-111(a), Idaho Code.

As to the question of if you have a domestic water right, I refer you to Idaho Code 42-227 (emphasis added):

42-227. Drilling and use of wells for domestic purposes excepted. The excavation and opening of wells and the withdrawal of water therefrom for domestic purposes shall not be subject to the permit requirement under section 42-229, Idaho Code; providing such wells and withdrawal devices are subject to inspection by the department of water resources and the department of environmental quality and providing further that the drilling of such wells shall be subject to the licensing provisions of section 42-238, Idaho Code. **Rights to ground water for such domestic purposes may be acquired by withdrawal and use.**

The use of the water establishes your water right.

Question 2: Can the right be contested by senior water right users?

I am not exactly clear what you mean by contested, but I will interpret the question as, *"If Sr. water right holders within the water district make a call, can my unrecorded domestic right be curtailed?"*

Water District 75D, Carmen Creek, does not regulate or deliver water rights with a ground water source, so your domestic use of ground water from the pond is not subject to regulation by the water district.

Question 3: Can senior water right users contest our non-consumptive water right that flows into the pond?

I will make the assumption that you are referring to water right 75-7607 as your non-consumptive water right. And I will interpret the question as, *"Can water right 75-7607 be curtailed in times of shortage?"*

Water right 75-7607 does not contain conditions identifying use under the right as non-consumptive. Therefore, yes, use of right 75-7607 could be curtailed, but only to the extent that it provides water to a senior water right. Meaning, if the use under right 75-7607 is truly non-consumptive, curtailment wouldn't provide anymore water to senior users. Therefore there would be no benefit to curtail right 75-7607.

Question 4: Is it possible to maintain the non-consumptive flow to the pond and use it as a domestic source?

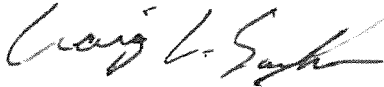
Water right 75-7607 and the unrecorded domestic right are two separate rights with two separate sources. The domestic use that includes the ponds is from a ground water source and can be diverted at the same time right 75-7607 is being diverted, assuming the elements of water right 75-7607 are not being exceeded.

Question 5: Can the proposed Slavin irrigation project impact our non-consumptive pond permit and/or domestic use to irrigate 0.5 acres?

I am not familiar with the details of the Slavin irrigation project, however, implementation of the project will not change the rules as to how your water rights are regulated.

I hope this helps answer your questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Craig L. Saxton".

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