



State of Idaho

DEPARTMENT OF WATER RESOURCES

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GARY SPACKMAN
Director

C.L. "BUTCH" OTTER
Governor

July 26, 2013

JAMES P SPECK
SPECK & AANESTAD
PO BOX 987
KETCHUM ID 83340

RE: Water Right License 37-8474 (Grove Creek Assn.)

Dear Jim:

I've reviewed your inquiry about modifying Water Right License 37-8474 to authorize domestic use in five homes instead of one in the Grove Creek Subdivision. Permit 37-8474 authorized the development of a water right for up to five homes and, as you noted, the 1992 *Proof of Beneficial Use* indicated domestic water use for five homes. However, the *Proof of Beneficial Use* also indicated that only one home had actually been built, and in 1997 the Department's field examiner described only one home on the Grove Creek Subdivision water system. Later in 1997 the permit holder, Grove Creek Assn., submitted an application to amend the point of diversion and place of use on the permit to match the field examiner's findings. The application for amendment included an amount of water consistent with beneficial use of water in one home. The amendment was approved with a condition limiting the domestic use to one home, and the Department issued License 37-8474 with the same condition. The Department issued the license as a preliminary order. The order was not appealed, and it became final in December of 1997.

Your request to modify the license to authorize the use of water for five homes is based on the "stub-in practice", which the Department sometimes employs when proof of beneficial use is submitted during the development phase of a subdivision. When employing the stub-in practice, the Department recognizes a domestic use for each subdivision lot to which a water line has been extended from the common mainline. For the Grove Creek Subdivision, it is not clear that water lines were stubbed to all five lots by the time the *Proof of Beneficial Use* was submitted in 1992. The *Second Addendum to Declaration of Covenants, Conditions and Restrictions of Grove Creek Subdivision* appears to provide easements for a main distribution line, and it refers to "the pump, pump house, well, pipelines and other accessory equipment" in the subdivision, but it does not make clear reference to lines stubbed to individual lots. In addition the Department's field examiner did not describe lines stubbed to the vacant lots.

Even if it were clear that domestic water lines had been stubbed to all five individual lots by 1992, it would still not be appropriate for the Department to modify License 37-8474. The stub-in practice is for subdivisions that proceed diligently to complete the sale and development of all the lots in the subdivision. At least five years after the *Proof of Beneficial Use* had been

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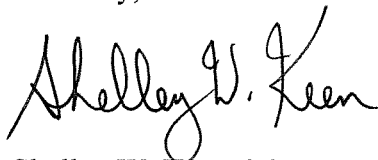
submitted, the Grove Creek Subdivision still had only one home among the five lots. It would not be reasonable for the Department to modify the license so that domestic water uses established so many years later, or domestic uses yet to be established, have the same priority as the water use established during the authorized development period.

In addition, the Department issues water right licenses as preliminary orders to bring administrative finality to the water appropriation process. It would not be appropriate for the Department to modify a longstanding final order except in the case of an obvious error, such as a clerical error.

There may be other opportunities to provide a water right for the newer domestic water uses in the Grove Creek Subdivision. The moratorium prohibiting the establishment of new water rights for consumptive uses in the Eastern Snake Plain area, including the Wood River Valley, provides for the issuance of new permits for domestic uses in multiple ownership subdivisions. It also may be possible to acquire an existing ground water right and transfer it to the domestic use within Grove Creek subdivision.

If you have any questions, please call me at 208-287-4947, or email me at shelley.keen@idwr.idaho.gov.

Sincerely,

A handwritten signature in black ink, reading "Shelley W. Keen". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Shelley W. Keen, Manager
Water Rights Section

cc: Allen Merritt at the Department's Southern Region Office

