



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 23, 2013

RIGBY ANDRUS & RIGBY
PO BOX 250
25 NORTH SECOND EAST
REXBURG ID 83440

RE: Application for Amendment of Permit No. 29-7869

Dear Mr. Rigby and Mr. Wood:

Thank you for your correspondence dated April 23, 2013, in regards to permit No. 29-7869. I appreciate your patience and would like to try to address some of the questions and points of disagreement in your letter. I hope that I can better explain the Departments analysis of what can be recognized as authorized development in connection with permit 29-7869.

Item #1:

In the letter date April 23, 2013, you stated, "In searching the water right back files, we have been unable to find any notification to Mr. Katsilometes of this "development period"."

On August 25, 1989, George William Katsilometes applied to the Department for a permit to appropriate 0.5 cubic feet per second of ground water within the NW¹/₄SE¹/₄SE¹/₄ of Section 21, Township 9 South, Range 38 East, B. M., for commercial purposes.

On December 20, 1989, the Department approved the application as permit no. 29-7869 with a condition requiring that proof of the application of water to beneficial use shall be submitted on or before January 1, 1992 (*See Pg. 2 & 3 of Water Right Back File 29-7869*).

Section 42-217, Idaho Code, provides in pertinent part:

On or before the date set for the beneficial use of waters appropriated under the provisions of this chapter, the permit holder shall submit a statement that he has used such water for the beneficial purpose allowed by the permit.

On October 31, 1991, the Department notified the permit holder by mail, that proof was due on January 1, 1992. The letter stated, "If you have not fully completed your project, and you or a previous owner of this permit have not received a prior extension of time, you may request an extension of time if the delay is for reasonable cause as provided in Section 42-204, Idaho Code." (*See Pg. 43 of the Water Right Back File 29-7869*).

On January 14, 1992, George William Katsilometes submitted proof of beneficial use. In the first paragraph at the top of the Proof of Beneficial Use form submitted by Mr. Katsilometes is the following statement (*See Pg. 1 of the Water Right Back File 29-7869*):

The Idaho Department of Water Resources will consider this form as a statement that the permit holder(s) has/have completed all development that will occur under this permit and that water has been applied according to the provisions of the permit for the beneficial use(s) described below.

When Mr. Katsilometes submitted proof of beneficial use on November 14, 1991, he was confirming that development under permit 29-7869 was completed.

Item #2:

Your letter disagrees with the diversion rate of 0.20 cfs listed on the proposed amendment. Your letter points out that on the proof of beneficial use statement, Mr. Katsilometes indicated that he was beneficially using 0.5 cubic feet per second (cfs).

The reason that the proposed amendment is for less than 0.5 cfs is because the available evidence shows that Mr. Katsilometes was only diverting ¹0.18 cfs during the authorized development period. I will outline that evidence in a timeline below:

On March 22, 1990, the west well was completed in connection with permit 29-7869 (*See Pg. 38 of the Water Right Back File 29-7869*).

On January 14, 1992, the Department received proof of beneficial use in connection with permit no. 29-7869, thus ending the authorized development period. The proof statement identified that the point of diversion was equipped with a 3 hp pump at 50 psi and a dynamic pumping level of 31 feet.

On March 16, 1995, the east well was completed (*See Pg. 32 of the Water Right Back File 29-7869*).

On August 9, 1995, department staff conducted a field investigation. The examiner reported that the west well was equipped with a 3.5 hp pump and a lift of 35'. This is fairly consistent with the information listed on the proof statement. The examiner also reported that the east well was equipped with a 5 hp pump and a lift of 35'.

Finding of fact #53² of the final order reads, "Katsilometes constructed a bathing pool for guests at the hotel. He installed a 5.0 horsepower pump in the well at a depth of 72 feet. The pump produced a flow of 80 gpm." (*See Pg. 12 of the Water Right Back File 29-8162*).

¹ The permit amendment and cover letter that IDWR sent Mr. Katsilometes, dated April 3, 2013, explained that the available evidence indicated that the development under this permit was 90 gpm or 0.20 cfs based on a pump test conducted by Thomas E. Lanchmar, Ph.D, on September 15 and 16, 2005. However, upon further review, it is unclear which well Dr. Lanchmar measured the reported 90 gpm. In his report, Dr. Lanchmar references the "...deepest and hottest of their three wells (well #1)." which would indicate he was talking about the well drilled in 2001 associated with permit 29-13672. Later he references the testing, "...one of the two shallow and cooler wells (well #3)." It is unknown which well is well #3. Because we cannot confirm that this test was conducted on the well drilled in 1990, IDWR is limited to recommending 80 gpm (0.18 cfs) for.

Finding of fact #58 goes on further to support the original diversion rate of 80 gallons per minute. Finding of fact # 58 reads, "Between 1990 and 1995, Katsilometes installed a 7.5 horsepower pump in the first well (*west well*), lowered the intake, and installed a pump in the second well (*east well*). He increased his total pumping capacity from 80 gpm to between 200 and 230 gpm." (See Pg. 13 of the Water Right Back File 29-8162)

What this timeline shows is the system was changed after the authorized development period, to increase the capacity of the delivery system from the identified 80 gallons per minute to over 200 gpm. The department can only recognize the development of the 80 gallons per minute under this permit. The additional developed rate and volume can be recognized under permit 29-13672.

Item #3:

In your letter, you disagree with the department's determination that the water right was developed in a manner inconsistent with the permit.

Permit 29-7869 was issued December 20, 1989. The permit identifies the point of diversion as being in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, Township 09 South, Range 38 East, B.M.

On August 9, 1995, department staff conducted a field investigation. The examiner reported that the point of diversion is located in SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 21, Township 09 South, Range 38 East, B.M. Further review finds that the point of diversion is located in Government lot 2 and the actual location description should be described as SW $\frac{1}{4}$ SE $\frac{1}{4}$, Lot 2, Section 21, Township 09 South, Range 38 East, B.M. (Attachment 1).

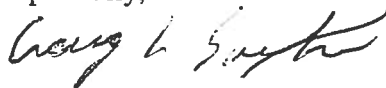
Because the point of diversion was developed in a different location than permitted, the permit needs to be amended before we can move forward issuing a license. See Section 42-211, Idaho Code.

In your last letter you had mentioned that a face to face meeting might be in order. I think that would be beneficial if Mr. Katsilometes had additional evidence showing that more than 80 gallons per minute was developed prior to January 14, 1992.

Please respond within 30 days. If the Department does not receive the amendment within 30 days, pursuant to Idaho Code §42-219(8) the Department may prepare an order voiding the permit.

You may contact me at (208) 287-4916 if you have any questions regarding this matter.

Respectfully,

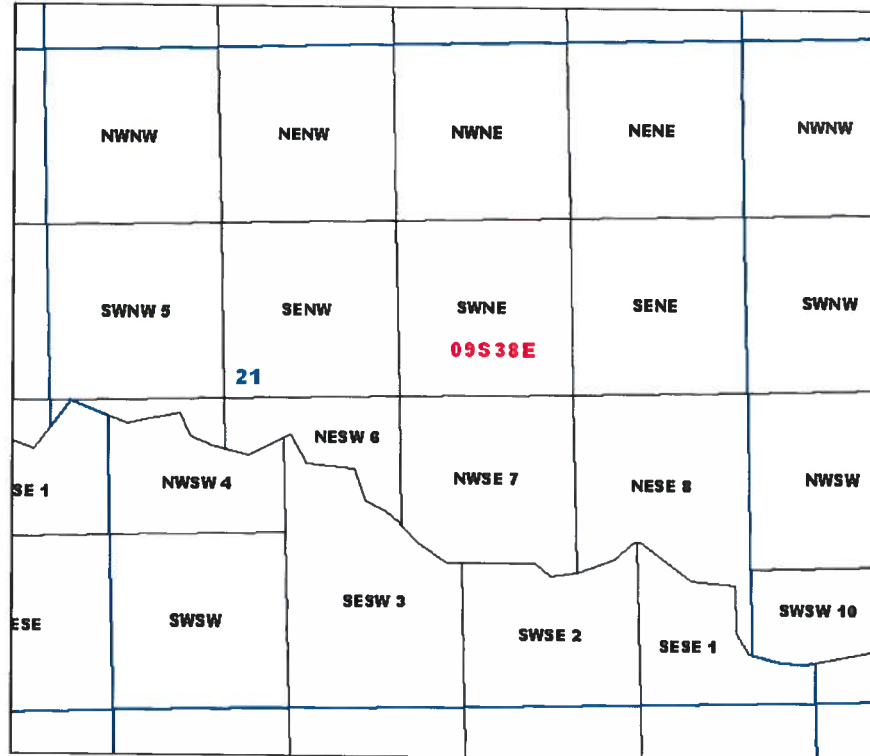


Craig Saxton
Water Rights Supervisor

² The referenced finding of facts can be found in The Final Order *IN THE MATTER OF APPLICATIONS FOR PERMIT NOS. 29-29-8162 AND 29-8164, IN THE NAME OF CRAIG LYON AND VICKI LYON* (Previously in the name of Lazy V Ranch).

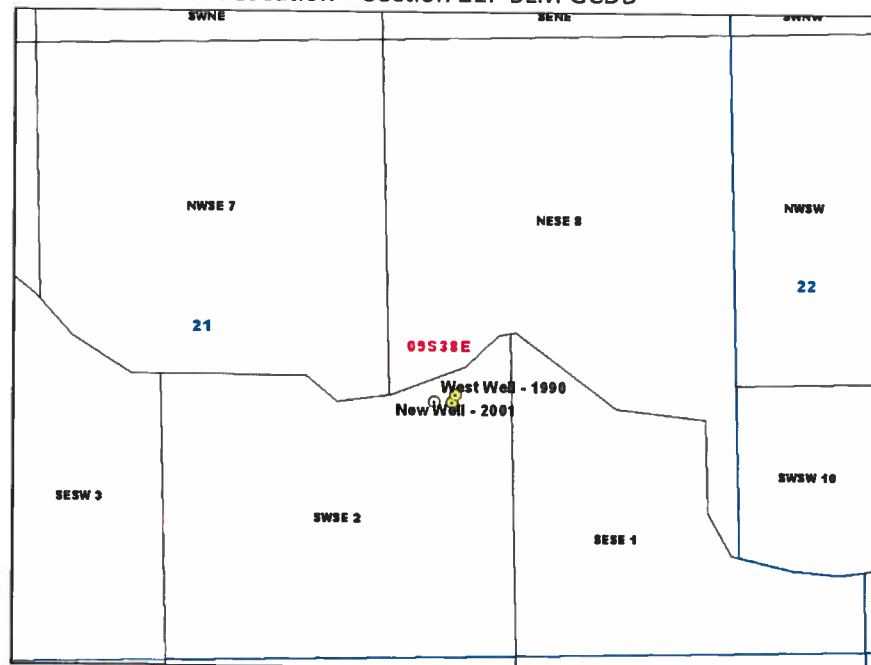
Attachment 1:

Section 21: BLM GCDB



This picture shows an overview of section 21, T09S, R38E. The source of this data is BLM GCDB.

Zoomed into Well Location – Section 21: BLM GCDB



Here we are zooming into the well location, specifically government Lot 2, SWSE, Section 21, T09S, R38E. The source of this data is BLM GCDB.

Zoomed into Well Location with Aerial Photo Background – Section 21: BLM GCDB



This picture shows the well locations on an aerial photo background. We are zoomed in to Government lot 2, SWSE.

Section 21 on the BLM original survey maps is split into separate surveys. I have attached the survey and identified the well location on the map.

