

Memorandum

To: Craig Saxton, Shelley Keen, Water Right File 63-12577

From: Tim Luke,  Water Compliance Bureau

Date: October 31, 2012

RE: Licensing of Permit 63-12577; Potential Lack of Water Right for Pond and Insufficient Water Right Rate of Flow

In my review of the field exam and preparation of a draft license for this permit I find the following two concerns:

1. As previously documented by Shelley in his memo of 10/6/2005, I find that the diversion capacity and the normal operating rate of flow most likely exceeds the rate authorized by the permit and draft license. The examiner's report appears to confirm this as well, and in fact suggests that the rate is likely about 250 gpm, which is five times the permitted rate. A potential reason for the higher rate may be due in part to the fact that the right holder is using a 5 Hp pump rather than the 3.5 Hp pump proposed in the application for permit.
2. The permit provides a flow-through aesthetic use associated with an existing pond but I cannot find any water right in our records that authorizes the pond or any other storage use at the Shakespeare Festival grounds. The permit as originally authorized did not include aesthetic storage or any other storage component although one of the permit conditions did state that the aesthetic use is for a pond. The inclusion of this condition appears to have been a mistake given that the pond was not identified or included in the application for permit.

I recommend that the cover letter accompanying the draft license identify the two concerns identified above.