

MEMORANDUM

DATE: November 14, 2011

TO: Water Right File 36-16479

FROM: Shelley W. Keen 

RE: Resumption of Use

Gary Funderburg (208-320-0879) called today on behalf of Luis Bettencourt to discuss the need to resume beneficial use of Right 36-16479. According to the approved extension of time to avoid forfeiture, resumption of use must occur by tomorrow, November 15, 2011. However, the right is leased to the Water Supply Bank (WSB). It has not been rented, so resumption of use has not occurred. It is not clear whether some other statutory protection against forfeiture, such as enrollment in the WSB, eliminates the requirement of Idaho Code § 42-222 to resume use by the deadline.

I explained to Mr. Funderburg that IDWR is not likely to pursue forfeiture of Right 36-16479 for failure to resume use while it is in the WSB, but someone else might.

Mr. Funderburg said he would explain the situation to his client and possibly remove the right from the WSB or rent it in 2012 to resume use. He acknowledged that it would not meet the November 15, 2011 deadline, but he felt it would show a good faith effort to protect the right from forfeiture.