

Rushing, Emalee

From: Saxton, Craig
Sent: Wednesday, April 27, 2011 3:47 PM
To: mberger@knrd.org
Cc: Rushing, Emalee
Subject: FW: Ownership Issue & Water Rights

Dear Mr. Berger,

Emalee has asked me to address some of your questions in your e-mail below. If I understand the situation correctly, it appears that after reviewing the change of ownership documents, we found that Kalispel Tribe only owns a portion of the place of use described under water rights 97-7004, and 97-7061. Normally, in this situation, each right would be split into two parts, the portion of the original water right that is applicable to ground owned by the Kalispel tribe would be one piece of the split, and the remaining portion of the water right that Kalispel Tribe could not show ownership of would remain in the name of the original owner. In your correspondence, you asked the following question;

"If water rights indicate other areas within those sections the land is not owned by the Kalispel Tribe. What do we need to do to rectify the situation regarding this issue?"

Let me address each water right individually:

97-7004: From what I can tell, we don't have a big problem with this. It looks like the Kalispel Tribe owns all but 15 acres of the property that 97-7004 is applicable to. If you can provide additional information showing ownership of that rogue 15 acres (NENW, T59N, R5W, S29), then IDWR can change the water right into your name without splitting it. If you cannot show ownership, then IDWR will split the right. All I think we need to process that split is the additional \$75 filing fee (\$100 fee for split -\$25 already paid).

97-7061: After reviewing the documents in the water right files, it appears that the Kalispel Tribe only owns a portion of the property that 97-7061 is applicable to. My review indicates that the portion of the water right that isn't applicable to Kalispel Tribe land, falls on National Forest (USFS) Land. From the previous correspondence it appears that there is some feeling that this could be in error, and the place of use should not have been licensed on USFS owned land. You have a couple of options:

1. If you agree that a portion of 97-7061 is applicable to USFS owned land, all you need to do is submit the remaining \$75 filing fee (\$100 fee for split -\$25 already paid), and IDWR will split 97-7061 proportionality based on the number of acres described in the water right that is owned by each party.
2. If you feel that all of 97-7061 is applicable to the Kalispel Tribe land, then you will need to file a transfer to change the place of use description on water right 97-7061 so the water right accurately describes Kalispel Tribe land as the only place of use for the water right. To do this, you will need documentation from the USFS that they agree to allow you to transfer the water right off of USFS land and onto Kalispel Tribe land. If you filed a transfer, we would process the change of ownership at the same time as the transfer. Transfer applications can be found online at the link below. You can always contact our Coeur d'Alene office of IDWR for assistance:

http://www.idwr.idaho.gov/WaterManagement/WaterRights/WaterRightTransfers/wrt_default.htm

"Please outline the steps that we can follow to either get new water rights,

If you want to apply for new water rights in addition to your portion of 97-7004 and 97-7061, you need to submit an application for permit for a new water right. The application form can be found at:

<http://www.idwr.idaho.gov/RulesStatutesForms/WaterRights/WaterRightForms.htm>

Briefly, the process goes like this. You file the application for permit. IDWR reviews the application. If all looks good, the application is advertized in the local paper to allow for the public to file a protest to the application. Assuming no protest is filed, a permit is issued. Once the permit is issued, you have 1-5 years to develop the water right. After 1-5 years, you are required to submit a statement that essentially is telling IDWR that your water right has been developed and you are ready for IDWR to conduct a field exam to verify beneficial use. A license is issued for the beneficial use developed within the permitted development period.

retire the rights,

To “retire” a water right would be to forfeit or abandon it. You can forfeit a water right through 5 years of continuous non-use. If you want to abandon a water right, you can simply send a letter telling IDWR that you wish to abandon your water right. A letter will work, but we have a form for this too if you would like.

and/or put the rights in the water bank.”

It seems the only thing holding up your water bank application is that we need to clear up the ownership issue we spoke about above.

“The Tribe is interested in restoring this area for fish and wildlife and as such we would like your help in retiring or banking any and all water rights located on these lands.”

I am not 100% sure what is meant here, but it sounds like you want to stop using your water rights...either temporarily or permanently. The easiest way to make a water right go away is to not use it for 5 years. If you just want to stop using it temporarily, but not lose it to forfeiture, then the Water Bank application, or a request to avoid forfeiture is the way to go. If you are looking to restore or create a fish and wildlife habitat, which will require use of water, you need to either file a transfer to change the nature of use for your current water rights from irrigation to wildlife, etc, or you will need to file for a new water right for each specific use.

I hope this helps answer your questions.

Respectfully,

Craig L. Saxton

From: Matthew Berger [mailto:mberger@knrd.org]
Sent: Thursday, March 31, 2011 3:28 PM
To: Rushing, Emalee
Cc: Ray Entz
Subject: Ownership Issue & Water Rights

Emalee,

I looked in the files and was rewarded by a pile of correspondence over this same issue spanning several years. We did the ownership change in July 2007. The deeds do not include the 2 acres you described in your letter of July 17, 2007. I have attached a diagram showing the Kalispel Ownership in Township 59 North, Range 05 West, Sections 20, 21, 22, 28, and 29. If water rights indicate other areas within those sections the land is not owned by the Kalispel Tribe. What do we need to do to rectify the situation regarding this issue? Please outline the steps that we can follow to either get new

water rights, retire the rights, and/or put the rights in the water bank. The Tribe is interested in restoring this area for fish and wildlife and as such we would like your help in retiring or banking any and all water rights located on these lands. If I can be of any help in the resolution of this issue please email or call, thank you.

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