

Saxton, Craig

From: Saxton, Craig
Sent: Tuesday, May 25, 2010 1:54 PM
To: 'Andy Waldera'
Subject: RE: Water Appropriation permit 65-13961: Your Client Terry A Jones

Andy,

I really don't see how we could grant the Request for Extension of Time simply because proof has already been submitted in a timely manner on September 23, 2008. If Mr. Jones wants to pursue that, what would happen is we would initially issue an order denying the request, then he would have the opportunity to file a Motion for Reconsideration and work our way toward a hearing were a case could be argued.

And I realized that I forgot the language that addresses that \$25 late fee I mentioned in Item 3 of my initial e-mail. I want to make sure you know where that came from.

Thanks,

Craig

<http://adm.idaho.gov/adminrules/rules/idapa37/0302.pdf>

or

Beneficial Use Examination Rule IDAPA 37.03.02.050.01c provides as follows:

A license shall not be issued for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to a license being issued, the director will notify the permit holder that the license amount will be limited because of insufficient examination fee was paid. The permit holder will be allowed thirty (30) days after the notice is mailed to pay the additional examination fee, along with a late payment penalty of twenty-five dollars (\$25) or twenty percent (20%) of the amount of the additional required fee whichever is more. If payment is received within the thirty (30) day period, the rate or volume licensed shall be limited by the original examination fee paid. For the purpose of determining advancement of priority for late fee as provided in Section 42-217, Idaho Code, fee shall not be considered as having been paid until paid in full, including any subsequent fee.

From: Andy Waldera [mailto:AJW@moffatt.com]
Sent: Tuesday, May 25, 2010 1:06 PM
To: Saxton, Craig
Subject: RE: Water Appropriation permit 65-13961: Your Client Terry A Jones

Craig,

Thank you for the detailed e-mail. One question I have is whether there is any hope of the pending Request for Extension of Time being granted. If the answer is "yes," then Mr. Jones would like to pursue that option. If the answer is "no," I will inform him accordingly, and then subsequently provide you with a extension request withdrawal notice. Then, we will see where we proceed from there.

Thank you again.

--Andy

From: Saxton, Craig [mailto:Craig.Saxton@idwr.idaho.gov]
Sent: Tuesday, May 25, 2010 8:26 AM
To: Andy Waldera
Subject: Water Appropriation permit 65-13961: Your Client Terry A Jones

Dear Mr. Waldera,

I wanted touch base with you about our discussion regarding permit 65-13961. I have been looking into this further and there are a couple of things that I wanted to run past you.

1. We still have an outstanding request for extension of time to submit proof of beneficial use along with the paid \$50 filing fee. Does your client wish to pursue this? I ask because if the request is withdrawn, I think we can refund the \$50. If not, that is fine, just let me know so I can move forward preparing an order to address the request.
2. I was talking to my boss about the possibility of your client hiring a certified water right examiner. One thing that I was thinking about is that the reason we have to advance the priority date at the time of licensing is essentially because the filing fees are considered part of the proof of beneficial use. So paying the fees late makes the proof late. If the proof is late, the priority date needs to be advanced.

The interesting thing is that when proof is submitted, the requirement actually says you have to submit fees or a completed field exam:

42-217(6), Idaho Code, provides as follows:

Such written proof as may be required to be submitted by such user shall be upon forms furnished by the department of water resources and shall include fees as provided in subsection K. of section 42.221, Idaho Code, or a file examination report prepared by a certified water right examiner.

It is not entirely uncommon that someone submits proof with the necessary filing fees so the Department can conduct the field exam, and then due to the backlog, they end up hiring a field examiner anyway and just submit the completed beneficial use field exam so the licensing can move forward. In this case, we generally refund the original fees that were paid because the Department is no longer charged with conducting the field exam. The proof is not considered late and the priority date is not advanced.

Based on the situation your client is in, if he were to submit a certified licensing field exam, the department would refund the money and move forward to issue a license, without advancing the priority date of the license because technically proof would not be considered late.

Do you think this is a option your client would be interested in?

3. Assuming we continue on track to have IDWR conduct the field exam, there is still a \$25 late fee that we haven't spoke about, simply because I wasn't aware of it until I dug deeper into this. The nice thing is that if your client wants to withdraw the request for extension of time, \$25 of that \$50 filing fee paid could be applied to that late fee. Just an idea.

Anyway, for now, the main thing I need to know is if your client intends to withdraw the request for extension of time. If he doesn't, that is fine, I just need to get on issuing an order to respond to the request.

Sincerely,
Craig L. Saxton

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