

Edl, Michele

From: Jim Speck [jim@speckandaanestad.com]
Sent: Monday, October 04, 2010 5:02 PM
To: Edl, Michele
Cc: 'Mr. Kevin Lakey'; 'Ms. Donna F. Tuttle'; 'Tom Denker'; Merritt, Allen
Subject: RE: update to Tuttle 37-8759

Michele,

I'm very concerned about this approach to licensing this water right. First, any requirement that the former Cook property be "dried up" means that it no longer be irrigated with this water right. It does not prevent Cook or any subsequent owner of that property from obtaining another valid source of water to irrigate it.

Second, I'm certain there is no evidence or proof of any kind that this water right is being delivered through the Mizer Ditch to irrigate the former Cook property. In fact, the Watermaster decree book includes the notation, "PERMIT 37-08759 TRANSFERD TO GROUNDWATER CHARGE AS SURFACE LEAVE IN BWR" so that water is not being delivered into the Mizer Ditch.

Third, if the current owner of the former Cook property is irrigating it without a valid water right then that is not and should not be my client's problem. She does not have any control over the use of that property. This should strictly be an enforcement issue with IDWR and should in no way delay the licensing of this permit.

Please get back to me on this as soon as you can.

Jim

James P. Speck
SPECK & AANESTAD
A Professional Corporation
120 East Avenue
P.O. Box 987
Ketchum, ID 83340
208.726.4421
208.726.0752 (fax)
jim@speckandaanestad.com

CONFIDENTIAL COMMUNICATION

This email message and any attachments are intended only for the use of the addressee named above and may contain information that is privileged and confidential. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you received this email message in error, please immediately notify the sender by replying to this email message or by telephone. Thank you.

-----Original Message-----

From: Edl, Michele
Sent: Monday, October 04, 2010 12:08 PM
To: Jim Speck
Cc: Mr. Kevin Lakey; Ms. Donna F. Tuttle; Tom Denker; Merritt, Allen

Mr. Speck,

I have concluded my licensing review of 37-8759 which is mitigated by non-use of 37-496C.

My supervisor has taken a close look at the protest resolution from 1992. Although the permit language may not have been as precise as the Department would like, acres should have been dried up at the former place-of-use for 37-496C.

My review of aerial photos of that acreage, shows it to be greener than would be expected if there is no water right coverage. Mel Schulte's 8/29/1994 memo in the back file of 37-8759, stated that a domestic well could be supplying some irrigation on the 2-acre, place-of-use for 37-496C. Although it's difficult to be precise using aerial photography, acreage in excess of a domestic exemption appears to be irrigated.

My supervisor is unwilling to sign a license without confirmation of compliance with the mitigation requirements. The state office and the southern region office have discussed how to resolve this concern. And as a consequence, Allen Merritt has assigned two agents to research the matter and determine if the acres required to be dried up have indeed been dried up.

I understand that a field verification trip has been scheduled for sometime next week.

I will keep this water right file close at hand and I will inform you when I receive an update from southern region staff.

Sincerely,

Michele Edl