

Review Memo

Date: June 3, 2010

To: File 47-7567

From: Craig L. Saxton

Re: Issuance of license 47-7567

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This permit was not developed to its full extent. The permit was issued for domestic, irrigation, heating and recreation. The field examiner found that water was being put to beneficial use for irrigation purposes and that the system was stubbed in for a domestic home. I recommend only issuing the license for irrigation use.

No Domestic use:

A 2005 field exam found that the domestic use is stubbed in and the field examiner questioned if the domestic and heating use permitted could be recognized and licensed under the stub in practice.

Application processing memo 18, **Definition of "Municipal"** describes the stub-in practice for subdivisions. It does not address if the Department will recognize the stub-in practice for domestic use is only permitted for one home. However, that isn't an issue in this case because on page 2, second paragraph under the Stub-in Practice for Subdivisions heading, the memo explains that the stub in practice is not always recognized if a sufficient time period has passed and domestic development has still not taken place:

"The stub-in practice was not applied in all subdivision development situations. For example, suppose the Department issued a permit for development of 100 homes in the subdivision and proof was submitted for 100 homes based on the stub-in practice. Many years later, the Department completes an exam and finds only 20 homes were built and using water. The remaining lots remained vacant and underdeveloped except for the stubbed-in service line. The Department would only issue a license based on the actual diversion and use of water because sufficient time would have passed to complete development of the subdivision."

Permit 47-7567 was issued on October 29, 1979. Proof was submitted on August 3, 1984. The permit holder has had 31 years to develop the domestic use and has not done so. Therefore, the stub-in policy is not applicable in this situation and domestic use cannot be recognized on the license.

No Heating Use:

IDWR's practice of licensing domestic uses that are stubbed in is not applicable to heating use since Application Processing Memo 22 clearly states that heating cannot be considered part of the domestic definition and should be designated as a unique use.

Application processing memo 22 reads:

"A reference to section 42-111, Idaho Code, indicates that the heating of dwelling houses comes within the meaning of "domestic purpose". However, since that 1922 court case from which that statement was taken, the interpretation of the domestic use has been narrowed considerably. Heating should be designated as a unique use."

Diversion Rate:

Capacity of the point of diversion of 2.52 cfs was taken from water right license 47-7575 that shares the same POD.

POD:

Point of diversion shared with 47-7575, 47-7566, 47-7115B, 47-7174A, 47-10276, & 47-16763: Metal Tag Number A0001476.

Conditions of Approval:

On April 12, 1982, the director of IDWR created the Banbury Hot Springs Ground Water management area (BHSGWMA). On May 2, 1983, the Department issued and order supplementing conditions of approval for permit 47-7567. The following conditions were added to the permit:

1. 30 DAYS PRIOR TO DRILLING OR MODIFICATION OF A WELL, THE PERMIT HOLDER SHALL NOTIFY THE IDWR OF WHO THE DRILLER WILL BE & WHEN DRILLING IS PROPOSED TO COMMENCE.
2. PRIOR TO DRILLING, THE PERMIT HOLDER &/OR DRILLER SHALL SUBMIT TO THE DEPT. A DRILLING PROSPECTUS WHICH INCLUDES PROPOSED CASING & GROUTING PROCEDURES. THE WELL SHALL NOT BE DRILLED WITHOUT APPROVAL OF THE PROSPECTUS.
3. FOR WELLS PRESENTLY BEING CONSTRUCTED OR MODIFIED, THE PERMIT HOLDER SHALL IMMEDIATELY ADVISE THE DEPT. OF THE NAME OF THE DRILLER OR DRILLING FIRM, PROPOSED DATE OF COMPLETION, & SHALL PROVIDE DETAILS OF WELL CONSTRUCTION TO DATE FOR DEPT. REVIEW & APPROVAL PRIOR TO REMOVAL OF THE DRILL RIG FROM THE SITE.
4. PRIOR TO WELL COMPLETION, THE PERMIT HOLDER &/OR DRILLER SHALL REQUEST INSPECTION & APPROVAL OF THE WELL CONSTRUCTION BY THE DEPT. CONSTRUCTION SHALL NOT BE CONSIDERED TO BE COMPLETED UNTIL APPROVED BY THE DEPT.
5. FAILURE TO COMPLY WITH ANY OF THE CONDITIONS IDENTIFIED ABOVE MAY RESULT IN CANCELLATION OF THE PERMIT.

A licensing field exam for 47-7566 which shares the same POD as this right, was conducted in 1980. The exam recognizes the well was in place at that time and water was being put to beneficial use. Thus the well was constructed and completed before the BHSGWMA was established.

Since the standard conditions for Drilling Permits cover all the conditions that are listed in the 5-2-1983 order (see 7/20/2009 memo in file 47-7575), it is recommended that these conditions not be included on the license.