

Subject: Re: NHLHA Water Bank Application

From: Lana Esplin <lgesplin@sunrivertoday.com>

Date: Tue, 01 Dec 2009 19:37:51 -0700

To: Aaron Marshall <aaron.marshall@idwr.idaho.gov>, lyle.swank@idwr.idaho.gov, Jerry Rigby <jrigby@rex-law.com>

BCC: Charles Coonrod <CCoonrod@foundation-strategies.com>, Esplin Lana <lgesplin@sunrivertoday.com>, Mont & Geneva Harris <mogen@gobigwest.com>

December 1, 2009

Mr. Marshall:

Regarding your email to me today:

Before I begin listing my questions as you ask me to do by email instead of telephone, I'd like to thank you for your help with the application process in the past and your patience with me up to now.

You understand that this case is very important to the North Henry's Lake Homeowners Association. I spoke with you before the adjudication in 2005 about putting our water in the Bank and you suggested we wait until the adjudication. As you now know, we need to get our water into the State Water Bank to complete our agreement with the Fish and Game. We would appreciate your answers and comments on the following questions and information.

1. Has David Stanish ever spoken with you about our NHLHA water right or our State Water Bank Application?

2. When you helped me with the NHLHA application in June of 2008, I explained that we had a 1 ½ cfs combined water right consisting of ½ cfs from Howe Springs, our domestic water supply, and 1 cfs Pittsburg Creek. I told you there was excess water from both sources that flowed into Pittsburg Creek. You said everything was okay with the application.

Q. Why is our application being questioned now, just at the time when we're trying to settle our case with the Fish and Game, with new rules, conditions, and requests put into place for us?

Q. Why are we being treated differently than other applicants?

3. When I studied the Water Bank Rules before the application, I didn't see any rules that would prevent us from renting our excess water from a combined water right. I've spoken with several individuals who are connected with water measuring, irrigation, and canal boards in our District. I can't seem to find anyone who has heard of a case where excess water can't be rented if a portion of the water is being used.

Q. Do you have any cases in our water district where you've made the same stipulations similar to ours?

Q. If so, could you give us any references?

4. Are your new conditions and requests set in stone?

Q. Why would we have to submit a new application?

5. I mentioned in my November 24th email to you that I didn't receive your letter dated October 8, 2009, listing new conditions and requests until about November 23rd because it had been sent to my summer address. Jerry Rigby mentioned you were sending a letter, but not anything about a 30 day deadline. Jerry said you have sole authority to act and I appealed to you in my October 11th email right after we heard from Jerry that you would be sending a letter. You didn't respond to that email so I had no chance to ask you more questions.

Q. Considering all the facts, why couldn't you keep our application that you have now and let us furnish you

with any additional information you need?

Q. Why a 30 day deadline? Some of the information you asked for can't possibly be furnished to you in 30 days.

6. Re: Your request for additional information

For instance, on the one hand you are asking for records on how much water the Howe Springs portion of our combined water right is using for our domestic use, which we can give you right now. But then you are asking for the ANNUAL volume of the unused water of the portion being offered to the water bank.

7. You asked if 1 cfs would be available year round. Yes we believe that much excess water is available year round. I thought I explained the following information to you before as I discussed the application with you in June of 2008. However, I know you have a huge volume of applications to look at and are very busy.

Re: The ½ cfs Howe Springs Portion of our water right:

Our Howe Springs source comes up on our own NHLHA private property. When needed for domestic use, it is pumped up the hill to a holding tank and piped to our homes. The excess water not used flows through the pump house, making a stream that joins Pittsburg Creek well below the highway, a few hundred feet above Henry's Lake. Our NHLHA water master keeps DAILY records of how much water the homeowners are using from Howe Springs and also how much water is flowing past the pump house into the lake. So YES we could furnish you that information on a daily, monthly, or annual basis.

Re: The 1 cfs Pittsburg Creek Portion of our water right:

Since the Fish & Game are claiming there is 4 cfs of water in Pittsburg Creek in their application to transfer their water right, it seems ironic that they haven't been required to furnish proof that there is indeed that much water in Pittsburg Creek, or establish how much of the NHLHA's higher priority date of 1 cfs of Pittsburg Creek is not being used by us.

Yes there is some use of Pittsburg Creek as it flows through our subdivision. The creek furnishes water to hundreds of aspen trees that are connected by continuous root systems next to the creek. A few homeowners living right next to the creek have used some of the water from the creek. However, EVERYONE understands that we can not use the water from Pittsburg Creek once 1 cfs has been placed in the water bank even if our water has not been rented.

Q. Since you know there are not any ANNUAL records from Pittsburg Creek, is it reasonable to ask us to furnish those records to you in 30 days?

8. You ask if renting a portion of our water right was in the public interest. The NHLHA is the public that would be affected and yes, it is in our interest to have the excess water in the water bank or we wouldn't have applied to rent our water.

9. You asked for information to confirm the rental would not result in an enlargement of our right. As I told you above, we can furnish you records of the volume of water used from Howe Springs. Howe Springs is the sole source of culinary water for the NHLHA residents. The residents are not dependent on the water from Pittsburg Creek. They would not use it if we placed it in the water bank, so there would be no enlargement of our right.

10. You had previously told me on more than one occasion that if we found our own renter for our water, you would process the rental request and place our water in the bank. Since you never told me any differently, we've continued to try to find our own renter.

Q. If we find our own renter, will you process the rental request with the current application?

Q. If we don't find our own renter and furnish you with the additional measurements and information you are requesting, will you place our water in the bank, or will you just wait like you did before?

11. I'd told you that our combined water right is listed as Municipal and both sources come up as springs and flow into Henry's Lake.

Q. Can our water be rented from someone who is looking for a stored water right in Henry's Lake? (We've had someone asking about that).

Q. Can our water be rented from someone who is looking for a ground water rental?

Q. If yes, what would be the conditions for those situations?

12. In the event the information we give you is not acceptable to you, is there an appeal process?

I'm asking these questions because Jerry Rigby told us you had sole authority.

Q. Who is the person on the state level that is over you?

Q. Is your department under the IDWR and if so, would the Director be over you?

Q. What would be the appeal process?

Thank you for consideration of the NHLHA's questions and concerns. Please let us know where we stand now, and what you would like us to do.

Lana Esplin
Representative
NHLHA

Subject: RE: NHLHA Water Bank Application email response
From: "Marshall, Aaron" <Aaron.Marshall@idwr.idaho.gov>
Date: Tue, 1 Dec 2009 07:50:29 -0700
To: "Lana Esplin" <lgesplin@sunrivertoday.com>

Ms. Esplin,

What questions do you have that remain unanswered? I'd prefer to correspond in writing to ensure that my message is not misunderstood. Please reply at your convenience.

Sincerely,

Aaron Marshall
Senior Water Resource Agent
Idaho Department of Water Resources
P.O. Box 83720
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-----Original Message-----

From: Lana Esplin [<mailto:lgesplin@sunrivertoday.com>]
Sent: Tuesday, November 24, 2009 1:07 PM
To: Marshall, Aaron; Jerry Rigby; Swank, Lyle
Subject: re: NHLHA Water Bank Application email response

Mr. Marshall,

As a representative from the North Henry's Lake Homeowners Association, I emailed you on Oct. 11, 2009 trying to clear up misunderstandings on what you had previously told me about our water right application beginning in June, 2008 when we applied. Again, you helped me with the

application, proof read the draft, helped me made a couple of corrections on the phone, then when you received it, you told me on the phone that everything was okay with the application. In subsequent phone calls, you mentioned the back log, said you'd process the application in the winter of 2008, and in two or three of our phone calls, you said if we found someone to rent the water, you'd process the

application right away. I emailed you on October 11th because our attorney, Jerry Rigby, said he had just met with you and mentioned something completely different from what you'd been telling me.

He also mentioned that you were going to be sending a letter to me. However, I've been at my winter home in St. George, Utah since September

15th and I didn't receive the letter until yesterday. It was addressed to my Island Park address. Jerry Rigby did receive a copy and he had instructions from us to take care of our water bank application problems.

I've tried to call you on the phone and left messages, but you don't return the phone calls. I tried again today and left a message. In the

meantime, we still have questions you haven't answered as we are again speaking with people who had expressed an interest in renting our water.

Could you please respond to this email and give me a time when you would be available for me to speak with you on the phone?

Thank you for your help in this matter.