

Mr. Gary Spackman, Acting Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

January 21, 2010

Re: North Henry's Lake Homeowners Association
Application 21-10015

Mr. Spackman:

This letter is to protest the NHLHA treatment regarding their June 30, 2008 Application to Lease Water Right application 21-10015 to the State Water Bank which is listed as Municipal. We believe that because of the pending IDFG application to transfer their 1949 abandoned water right #21-02100, which is junior to the NHLHA 1904 combined water right, there has been interference by the state to prevent our application from being accepted into the State Water Bank. Because of this and other incorrect information that was given to Aaron Marshall and Ernie Carlson by the state, we believe the IDFG application is not in the public interest, is an enlargement of their original water right and is causing injury to our water right.

In June of 2008, Mr. Marshall told Lana Esplin, past NHLHA Secretary, while helping with their Water Bank application, that the State Water Bank would not require monitoring the amount of water flowing out of Pittsburg Creek (see Background below).

In September 2008, our attorney, Jerry Rigby, told us that the State Water Bank does not verify any flows in order for a water right to be rented.

October 9, 2009 This changed on October 9, 2009, when Mr. Marshall sent Mrs. Esplin a letter, based on incorrect information he had been given by someone. In this letter he requested measurement information (see attachment #1).

October 11, 2009 The same day Mrs. Esplin heard Mr. Marshall was sending a letter because someone had told him our application was conditional, she immediately tried to call him and left a message. When he didn't call back, she then sent him an email (see attachment#2).

November 24, 2009 Mrs. Esplin had continued trying to call Mr. Marshall and left messages. Mrs. Esplin didn't receive Mr. Marshall's letter dated October 9, 2009 until November 23rd because it had been sent to her summer address in Island Park and there had been a delay in forwarding her mail to her winter home in St. George, Utah where she'd been since September 15th. On November 24th, she sent another email to Mr. Marshall asking him to call her (see attachment #3).

December 1, 2009 Mr. Marshall sent an email response to Mrs. Esplin asking her to list her questions in writing (see attachment #4).

December 1, 2009 Mrs. Esplin sent an email to Mr. Marshall listing her questions. Mr. Marshall has never responded to these questions. (See attachment #5)

BACKGROUND

June 2008

During the week prior to the Water Bank's receiving the NHLHA application, Lana Esplin was helped on the phone by Aaron Marshall in filling out the form. Mrs. Esplin explained to Mr. Marshall that the NHLHA 1 ½ cfs Combined Right included ½ cfs from Howe Springs. She explained that Howe Springs was located within the NHLHA subdivision and was the sole source for the piped community water system. She said that since most of the 210 homeowners were there only in the summer there was excess water flowing in a stream past the water system into Pittsburg Creek then to Henry's Lake. She also told Mr. Marshall that the 1 cfs Pittsburg Creek portion of the water right was sometimes used for irrigation in the summer by homeowners living by the creek. During the same phone call, she also asked Mr. Marshall the following questions and the questions and his answers were then emailed to the NHLHA Board:

1. Q. Does the location of a water right make a difference on accepting it into the Water Bank?
(Aaron Marshall) No
2. Q. Does it matter whether it is surface water or stored water? (Aaron Marshall) No
3. Q. Does it matter whether the water use is municipal or irrigation? (Aaron Marshall) No
4. Q. What will you need to check in order to approve the application
(Aaron Marshall) We need to check the point of diversion.
(Mrs. Esplin then explained to Mr. Marshall about our point(s) of diversion.)
5. Q. Will you require monitoring the amount of water flowing out of Pittsburg Creek?
(Aaron Marshall) No
6. Q. Will you proof read our application if I email it to you?
(Aaron Marshall) Yes

After sending the application by email, and after Mr. Marshall had proofread it, Mrs. Esplin made a 2nd phone call where Mr. Marshall gave her a couple of corrections to the application. She also asked the following questions:

6. Q. Who checks the application and decides whether to accept it into the water bank?
(Aaron Marshall) I do and then I prepare the Lease papers.
7. Q. Do you see any reason why our water wouldn't be accepted into the water bank?
(Aaron Marshall) No
8. Q. Once our water is accepted into the water bank, the instructions for renting say we could not use it. If it's not rented, we wouldn't receive any rent money, is this correct?
(Aaron Marshall) Yes. I don't think we can rent it out this year unless you know of someone who wants to rent it.
(Mrs. Esplin) There may be someone near us who was contacted about it some time ago.

Fall 2008

Mrs. Esplin made another phone call to Mr. Marshall in the fall of 2008 asking the status of the application. Mr. Marshall said he'd been busy, but that he'd get to it in the winter and in the order that the applications were received.

Mr. Spackman
January 21, 2010

Mr. Spackman, we would be grateful if you would read the material provided and assist us in a resolution of this problem.

Thank you for your time and consideration.

Sincerely,

**Charles Coonrod
President North Henry's Lake Homeowners Association
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