

MEMORANDUM

DATE: October 1, 2009

TO: Water Right File 95-9323

FROM: Shelley W. Keen *SWK*

RE: Daily diversion volume limit

Yesterday I received a telephone inquiry from attorney Andrew Waldera of Moffat Thomas about the daily diversion volume limit described in condition no. 4 of Permit 95-9323. His client is considering buying a lot in the subdivision, but he's concerned that 900 gallons per day may be insufficient for home he hopes to construct. Mr. Waldera asked if the 900-gallon limit was a "use it or lose it" daily maximum or an average daily maximum. I explained that IDWR's interpretation of the second sentence of item B.1 of the settlement agreement signed by the permit holder and Kootenai Environmental Alliance is that it's a maximum daily limit with no averaging or carry-over credit, similar to the 13,000 gpd limit described in Idaho Code § 42-111 for domestic water rights.

This afternoon I spoke on the phone with engineer Jim DeSmet of Quantum Engineering who indicated that he was involved in the settlement negotiations with KEA. Mr. DeSmet said he understood the 900-gallon limit to be an average daily limit that would not be exceeded in the winter but would likely be exceeded in the summer for lawn irrigation. I explained that IDWR interpreted item B.2 of the agreement to indicate that irrigation would be limited on the subdivision lots.

Mr. DeSmet said that he would attempt to meet with KEA to confirm his interpretation of the intent of the agreement. I agreed to review any written interpretation of the agreement or amended agreement submitted by the parties.