



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

December 10, 2008

BEAR LAKE SANDS INC
2230 SOUTH 3270 WEST
SALT LAKE CITY UT 884119

RE: Water Right Permit No. 11-7372

Notice of Pending Order to Void Permit

Dear Permit Holders:

On April 14, 1997, the Department of Water Resources (IDWR) received the Proof of Beneficial Use statement you submitted for Permit 11-7372, which authorized you to establish a right to divert 1.08 cfs of water from ground water in Lot 1 (NW $\frac{1}{4}$ NE $\frac{1}{4}$), Section 12, Township 16 South, Range 44 East, for domestic, commercial and irrigation uses. On September 17, 2008, IDWR personnel conducted an examination to verify your water use. I have reviewed the documents available to me for permit 11-7372 and for previously licensed water right 11-7359.

In the course of my review, I found that one well is supplying water to three subdivisions: East Shore, Bear Lake Sands II and the Bear Lake Villas. When proof of beneficial use for this permit was due on July 1, 1995, only East Shore and Bear Lake Sands II subdivisions were developed. Villas lots were developed after proof was submitted for this permit so water use attributed to that subdivision will need to be validated through another water right. Domestic use for 20 lots in Bear Lake Sands II subdivision and 59 lots in East Shore subdivision, and irrigation use for several common areas in East Shore was recognized and licensed in 2007 through water right 11-7359.

Permit 11-7372 seeks to have additional use on the same supply system recognized. The field examiner's report dated September 17, 2008, does not mention commercial or irrigation use but some additional domestic use was recommended. I compared maps from the back-file for water right license 11-7359 with maps available for this permit. I found ten (10) additional lots in the East Shore subdivision had been platted by the proof due date. Lots 61-70 (inclusive) replaced what had been a common area in the map for 11-7359 and beneficial use on those ten lots were not recognized by license 11-7359.

Recent aerial photography shows several of the lots are still vacant. Without above ground confirmation I am dependent on drawings of below ground assets and appropriate application of the Department's longstanding "stub-in" practice for my licensing recommendation. Drawings of the main water lines for this supply system are available to me, but I do not have engineering

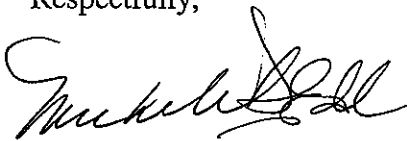
drawings which show that any of the lots had been stubbed-in to the main lines by the proof due date. Without those drawings or other evidence to establish beneficial use by the proof due date, I am not able to conclude that there was any additional water appropriation established through permit 11-7372.

The final step in the water appropriation process is the issuance of a Water Right License. By issuing a license, IDWR recognizes that you have met the requirements for establishing a water right. A license can be issued only for development that occurred prior to the date that the Proof of Beneficial Use statement was filed and only for development that is not covered by an existing water right. No water right has been established, and no license can be issued, if you did not divert and use more water than authorized under right 11-7359 within the time period authorized by your permit. After a Proof of Beneficial Use statement has been submitted a permit cannot be retained to cover future development of the resource.

It is my understanding that the water use within the East Shore subdivision now exceeds what the Department is able to recognize by a license. There are a couple of options for ensuring that the homes in lots 61-70 are covered by a water right. The options are either a transfer from some of the vacant lots covered by 11-7359 or a new water right mitigated in accordance with the management plan for the Bear River Ground Water Management Area. The Department will be happy to work with you and your homeowners to authorize the additional use. If a discussion of options would be useful, I or others with the Department, can meet with you at your convenience.

If you believe you developed a beneficial use of water under Permit 11-7372 in addition to the use authorized under right 11-7359, please send me supporting documentation within thirty days. If I do not hear from you within thirty days, I will take action to void your permit. If you have any questions, please contact me at 208-287-4946.

Respectfully,



Michele D. Edl
Associate Engineer

Cc Randall Budge