



State of Idaho

DEPARTMENT OF WATER RESOURCES

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September 29, 2008

CHRISTOPHER H MEYER
GIVENS PURSLEY LLP
601 W BANNOCK ST
PO BOX 2720
BOISE ID 83701-2720

RE: Water Right Nos. 95-9055 and 95-9248 – Land Application of Treated Effluent

Dear Mr. Meyer:

This letter responds to your written correspondence dated September 2, 2008 regarding water right permits nos. 95-9055 and 95-9248. Your letter posed the general question of whether either permit must be amended to land apply treated wastewater to golf courses within The Club at Black Rock and Black Rock North (collectively the "Project"). In addition, you asked five specific questions pertaining to this issue. Please find below each of your questions restated in *italics* followed by my response.

1. *The condition on Water Right No. 95-9055 stating "Place of use is within the service area of CAG Investments, LLC." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.*

The water right database is a representation of the actual water right documents and is not an official record. Ideally, the data base would be an exact simulacrum of the official record. Nonetheless, there is a discrepancy between the place of use described upon the actual signed permit and the proof report document generated from information contained in the data base. The signed permit establishes the terms of the permit. Permit no. 95-9055 does not describe a "service area" place of use. Instead, the permit describes the place of use by the traditional means of a specific quarter-quarter delineation.

2. *The place of use for Water Right No. 95-9055 describes an expanding municipal service area and is not limited to the specific forty-acre tracts identified in the Water Permit Report.*

Unfortunately, the place of use identified on the official record of permit no. 95-9055 does not describe an expanding municipal service area but delineates a specific place of use by quarter-quarter description.

3. *The condition of Water Right No. 95-9055 prohibiting use of this ground water right for irrigation of land to which surface rights are available does not prohibit land application of treated municipal effluent on such land.*

You are correct. This condition addresses the primary or first use of the diverted groundwater. IDWR recognizes municipal use as being fully consumptive. Once the

groundwater has been used for its initial purpose, the municipal provider may reuse the reclaimed water within its place of use for other purposes that are defined as specific uses of water within the broader municipal purpose.

4. *The condition on Water Right No. 95-9248 stating "Place of use is within the area served by the public water supply system of the Ridge at Blackrock Bay Homes, Inc. The place of use is generally located within Government Lot Numbers 1, 2, and 3 of section 9, Township 48N, Range 4W." will be understood to apply to the service area of the current owner and municipal provider, Black Rock Utilities, Inc.*

Permit no. 95-9248 recognizes a generally described service area as the place of use of the water diverted under the permit. The Ridge at Blackrock Bay Homes, Inc. assigned the permit to Black Rock Utilities, Inc., and Black Rock intends to similarly use the water. The service area is the portion of the Black Rock project served by the Black Rock municipal system.

5. *The place of use for Water right No. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in the condition quoted above.*

Based upon Idaho Code § 42-202(B) and § 42-219, the place of use for permit no. 95-9248 describes an expanding municipal service area and is not limited to the lots identified in condition number six of the permit.

In response to your general question of whether a permit amendment is required to land apply treated wastewater to golf courses within the project, the answer is different for each permit. Permit no. 95-9055 does not describe a "service area" place of use. Treated water used for irrigation would have to be applied to those portions of the golf course(s) that are within the described place of use on the permit document.

If Black Rock wishes to land apply water diverted under permit no. 95-9055 outside the current place of use, a permit amendment would be required modifying the place of use. IDWR has discretion to publish notice of an application for amendment. The original public notice for this permit used the language "municipal use is within the service area of the applicant." IDWR will not require publication of notice of the application for amendment, assuming Black Rock only proposes to change the place of use to a generally described service area.

Permit no. 95-9248 describes the place of use as a "service area." The place of use may change as the service area changes. An amendment to permit no. 95-9248 is not required to land apply reclaimed municipal water.

Respectfully,



Gary Spackman

Cc: Bob Haynes, Regional Manager, Northern Regional Office, IDWR
John R. Layman, Layman, Layman & Robinson
Barry Rosenberg, Executive Director, Kootenai Environmental Alliance
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