

Carlsen, Ernie

From: Rob Harris [rharris@holdenlegal.com]
Sent: Thursday, March 13, 2008 9:12 AM
To: Carlsen, Ernie
Subject: Elliott Creek Applications

Ernie:

See the below email. Everyone is on board with the increased acreage on the Elliott Creek Applications. Bill will get a revised map sent to you or me soon, which will show the acreage that will be retired for the initial fill.

Robert L. Harris
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From: William H. Anderson [mailto:bill@andersonmontana.com]
Sent: Wednesday, March 12, 2008 9:40 AM
To: 'Rob Harris'
Cc: jamie@conservationsolutions.net
Subject: RE: Follow-up Meeting with IDWR regarding Applications

Hi Rob,

I am OK with the new number and will forward a revised map later today when I get to SanDiego.

Thanks,

Bill

William H. Anderson
 Anderson Engineering, Inc.
 2417 W. Main, Suite 1A
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From: Rob Harris [mailto:rharris@holdenlegal.com]
Sent: Wednesday, March 12, 2008 9:22 AM
To: 'Jamie Crowley'; 'William H. Anderson'
Subject: RE: Follow-up Meeting with IDWR regarding Applications

Bill and Jamie:

Last I heard from both of you, Jamie was OK with the retirement of 24.8 acres. Attached are the revised water use agreements. Bill, you were going to look at some numbers regarding IDWR's new position that we needed to use consumptive use values and then get back to me. I haven't heard back, so I presume you are OK with the new amount. If so, the Department needs a revised place of use map indicating which 24.8 acres will be retired for one year. You made a similar map before for the 12 acres, and the Department simply needs a revised map. I visited with Ernie with the Department today on this application, and he would like to get it finalized, so the sooner I get the map and signed water use agreements, the better.

Thanks,

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From: Jamie Crowley [mailto:jamie@conservationsolutions.net]
Sent: Wednesday, March 05, 2008 1:49 PM
To: Rob Harris; William H. Anderson
Subject: RE: Follow-up Meeting with IDWR regarding Applications

Rob and Bill,

I am fine with the change in the nonuse agreement, as long as it does not have an impact on the Bates Ranch water rights. I will be out of the office until next Monday. I will be able to sign the nonuse agreement then, but for some reason the agreement was not attached to the e-mail that I received. Please resend the agreements.

Thanks,

Jamie

From: Rob Harris [mailto:rharris@holdenlegal.com]
Sent: Monday, March 03, 2008 8:11 AM
To: 'William H. Anderson'; Jamie Crowley
Subject: RE: Follow-up Meeting with IDWR regarding Applications

Bill:

I will not find its way into the adjudication. It is simply an agreement for nonuse of the water right for one year. The 3 AFA is the delivery amount, and I understand your argument that 3 AFA would not be diverted for irrigation, but would be diverted to fill the ponds. I think there is a very good argument that this is the value that should be

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used. My concern with pushing this argument is that it will delay processing of the applications, and if it is not a problem to cease irrigation of the 24.8 acres, then I recommend we go with IDWR has already agreed they will accept. Let me know your thoughts once you've looked at the exhibits.

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From: William H. Anderson [<mailto:bill@andersonmontana.com>]
Sent: Monday, March 03, 2008 8:01 AM
To: 'Rob Harris'; jamie@conservationsolutions.net
Subject: RE: Follow-up Meeting with IDWR regarding Applications

Good morning Jamie, Rob,

I am ok with this as long as it does not find its way into Bates Ranch water adjudications. The 3 acre feet is based on water Bates could use if they grew alfalfa or other crop. Need to check exhibits, etc. when I get into the office this morning.

Thanks Rob

Bill

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From: Rob Harris [<mailto:rharris@holdenlegal.com>]
Sent: Saturday, March 01, 2008 3:45 PM
To: 'William H. Anderson'
Cc: jamie@conservationsolutions.net
Subject: Follow-up Meeting with IDWR regarding Applications

Bill:

Yesterday I had a follow up meeting with Ernie Carlson of IDWR concerning the applications that were filed last

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year. He ran into one other area of concern that has been resolved, but I want to make sure you are aware of it. He is now going to forward the applications to Boise for final review **once I hear from you as to whether the change discussed below is acceptable.**

In the documents associated with the applications, there are copies of two water agreements between Elliot Creek Ranch, LLC, Elliott Creek, LLC, and Bates Ranch, LLC in which the parties agreed to not use 12.81 acres of water rights in order to mitigate for the initial fill of the ponds. There is also a map showing the 12.81 acres that are not to be irrigated. The drying up on these acres was intended to mitigate for the 38.44 acre-feet of water used to initially fill the ponds. In Ernie's review, he noticed that the water use agreement is based upon a standard of 3.0 acre-feet per acre. This amount is the amount generally delivered per acre for a growing crop, but is not the consumptive use of the crop. IDWR wants the mitigation based on the consumptive use of the crop. The amount that should be used is the consumptive use value (precipitation deficit) for the historic crop at the site, which I presume is a low maintenance grass pasture. Here is the link to the IDWR website which shows these values:

<http://www.kimberly.uidaho.edu/ETIdaho/stcvrstats.php?station=102676&cover=16&stats=Deficit>

Using the values from the website above (472 mm for the growing season), an acre of low maintenance grass pasture consumptively uses 1.55 acre-feet per year. This means that the nonuse of acres for the initial fill needs to be increased from the original 12.81 to 24.8 acres. This is calculated by taking the total acre feet (38.44) and dividing it by the consumptive use (1.55 AFA). This yields the 24.8 acres that need to be non-irrigated for one season. This acreage is still less than the 33 acres authorized under the water rights used for mitigation, so this does not appear to be an issue (especially because the two parties to the water agreement are both associated with Jamie).

For me, the above recalculation is simply academic, and will not result in any significant increase in water to anyone. However, in the interest of time, I suggest that we accept IDWR's methodology so that permits can be issued. I have attached revised Water Use Agreements with the updated acreages, amounts, and dates, and request that they be signed by Jamie and returned to our office. I do not have to have them in order for Ernie to move forward on the processing (he is going to forward them to Boise on Monday if he hears from us), but he would like the agreements in the Department's file sometime next week. In addition, Ernie would like to have an updated map of the one Bill prepared showing the 24.8 acres to be non-irrigated this year. The original map showed the 12.81 acres. Again, the sooner we get these documents, the better, but as long as I get an email that you are OK with the 24.8 acre mitigation, I will send a confirmation email to Ernie to keep things moving, and we can supplement IDWR's file as soon as we receive the map and agreements.

If this is done, Ernie believes the permits could be issued within the next two weeks. Let's keep things moving, and let me know if you have any questions.

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4/10/2008