

Keen, Shelley

From: Keen, Shelley
Sent: Tuesday, October 09, 2007 12:50 PM
To: 'Scott Smith'
Cc: Carlsen, Ernie; Padilla, Cherie
Subject: RE: Status on certain Water Rights

Scott,

I apologize for not responding to your voicemail message from last week. I was out of the office Thursday, Friday, and Monday.

I have asked Water Resource Agent Cherie Padilla to process the ownership change notice for Mr. Lowder right away. An ownership change notice does not have to be approved by IDWR; it is a record-keeping function. Nevertheless, I am sure it will be useful to your client to know that IDWR has updated the record. You should expect a confirmation notice in a few days.

Last February I communicated with Roger Warner in IDWR's Idaho Falls office to express some concerns about the amendments for Bear Lake West Property Owners Association. Normally IDWR is very reluctant to process applications to amend permits when proof of beneficial use has already been submitted. The reason for the reluctance is that the changes authorized by an amendment could make it difficult for IDWR to confirm the beneficial use that was established during the authorized development period. For that reason, I asked Roger to send me a completed Beneficial Use Field Report for each of the two permits before IDWR would continue to process the applications for amendments. If the applications for amendments match the findings of the examiner, then IDWR may be able to approve the amendments and issue water right licenses at the same time.

I also expressed concerns about the indication in the "Explanation" attached to the applications for amendments that Bear Lake West Property Owners Association expected to receive licenses that would total 240 AF per year. IDWR normally issues licenses for domestic use at 1.2 AF per home – 0.6 AF for in-house use and 0.6 AF for external use. Because the permits total 100 homes, the anticipated volume would be 120 AF, assuming usage in 100 homes was actually established during the development period. It might be possible to issue licenses for more than 0.6 AF per home for external use if it is shown that more was actually used. However, with lawns not exceeding 2000 sq. ft., that is unlikely.

Because Roger Warner has left IDWR, this afternoon I asked Ernie Carlsen to return my call to discuss completing the field reports for the two permits. He or I will keep you apprised of our progress.

Please call or email if you want to discuss these items further.

Sincerely,

Shelley Keen
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-----Original Message-----

From: Scott Smith [mailto:sjs@racinelaw.net]
Sent: Tuesday, October 09, 2007 11:43 AM
To: Keen, Shelley
Subject: Status on certain Water Rights

10/9/2007

Shelley:

This email is a follow up to a voice message that I left on your telephone today. I am hoping to get a status report on certain water right filings that I understand are currently being reviewed by your office.

The first is an Amendment to 11-7399 and 11-7424 filed on behalf of our client Bear Lake West Property Owners Association. Our records show that all protests were withdrawn in January 2007. If possible, we would like to know if it is close to approval and when a final decision might be reached.

The second is a Notice of Change in Water Right Ownership filed on behalf of our client Brent Lowder with regard to Water Rights 13-781, 13-782, and 13-783. I spoke with you about this matter some time ago. These water rights are associated with a parcel of property located near Grace, Idaho, which was split between Brent Lowder and Brent Christensen. Based upon a notice of change in ownership form filed by Brent Christensen in October 2005, IDWR incorrectly changed ownership of these water rights to show that they were wholly and exclusively owned by him when in fact Brent Lowder is entitled, based on the split in the property, to a small portion of those water rights. Based upon your recommendation, we filed with you a new Notice of Change in Water Right Ownership to correct this mistake. We understand that Brent Christensen has or will very soon sell his property to another party which will only further complicate this matter. If possible, we would like to know the status of the Notice of Change in Water Right Ownership filed by Brent Lowder and whether we should expect a decision in the near future.

If you need any further information regarding either of these matters, please let me know.

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10/9/2007