

Keen, Shelley

From: Anna Trentadue [Associate@beemanlaw.com]
Sent: Wednesday, October 17, 2007 5:10 PM
To: Keen, Shelley
Cc: Norm Young
Subject: Hearing on the licensure proceeding for 37-7638.

Hi Shelley-

This is Anna Trentadue from Jo Beeman's office. We wanted to let you know that we filed the attached request for hearing to determine the status of licensure proceedings for 37-7638 in the SRBA today. Special Master Bilyeu granted our motion at today's initial hearing for this water right which was held at 2:00pm in Fairfield, Idaho.

This hearing on the licensure proceeding for 37-7638 is scheduled before Special Master Bilyeu on December 19, 2007 at 3:30pm. You may dial in to this hearing to participate by calling 1-225-383-1099 (participant code 926509). If you have any questions, or would like to discuss the current status in the licensure of 37-7638, you are more than welcome to contact us. As you know, the licensure has been ongoing for several years, and we seek to have the license issued by IDWR as soon as possible. Please let us know if there is anything else that we can do to facilitate the licensing of this water right.

--Anna Trentadue

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10/17/2007

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Attorneys for Sand Springs Ranch & Company

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Subcase No. 37-7638
	)	
Case No. 39576	)	REQUEST FOR HEARING TO
	)	DETERMINE STATUS OF LICENSURE
_____	)	PROCEEDINGS.

Sand Springs Ranch & Company, by and through its counsel, Beeman & Associates P.C., hereby requests a hearing to determine the status of licensure proceedings for permit 37-7638 so that a partial decree may be issued consistent with the elements of the license. The licensing proceedings for water right 37-7638 have been in process for over 25 years, and Sand Springs Ranch respectfully requests this hearing to bring closure to those proceedings by the issuance of a license for water right 37-7638.

The application for permit 37-7638 was filed with the Idaho Department of Water Resources (IDWR) on September 16, 1977. Permit 37-7638 was approved on September 16, 1977. Proof of beneficial use was submitted to IDWR on July 17, 1982. The Snake River Basin Adjudication (SRBA) commenced on November 19, 1987. An SRBA Notice of Claim for 37-7638 was filed by Sand Springs' predecessor Ambrose Farms on October 24, 1989. IDWR's recommendation to the SRBA court for 37-7638 was filed on December 2, 2006. Sand Springs

obtained through the statutory permitting process, an SRBA decree is conclusive as to the water right **if proof of beneficial use was filed on or before the commencement of the SRBA on November 19, 1987.** That is, if proof was filed on or before November 19, 1987, the SRBA decree may not be issued "subject to the terms of the license to appropriate water that is ultimately issued." IDWR must issue the license so that the decree can be entered.

The proof of beneficial use for permit 37-7638 was filed July 17, 1982. Sand and Springs Ranch is asking for this hearing in order to complete the licensing of 37-7638 consistent with the proof of beneficial use and the information provided to IDWR during the final licensing process for 37-7638, confirming the extent of diversion and beneficial use made in accordance with the permit during the relevant development period. All of this information was provided to IDWR prior to the issuance of the Director's Report for 37-7638.

The License for 37-7638 needs to be issued so that an SRBA partial decree may be issued consistent with the elements of the license.

Respectfully submitted this _____ day of October 2007.

BEEMAN & ASSOCIATES P.C.
Attorneys for Sand Springs Ranch & Company

By _____
Josephine P. Beeman

Ranch objected to the recommendation, based on IDWR's failure to have issued a license for 37-7638 and based on IDWR's failure to include the licensing information in the SRBA recommendation, particularly since IDWR had the requisite information to license 37-7638 prior to issuance of the Director's Report for 37-7638.¹

The fact that the Proof of Beneficial Use for permit 37-7638 was filed on July 17, 1982, **prior to** the commencement of the SRBA on November 19, 1987, is significant legally.

Where proof of beneficial use is filed **after** the commencement of the SRBA, Idaho Code § 42-1409(7) gives IDWR the discretion whether to include these "later" proof water rights in the SRBA. Idaho Code § 42-1421(3) then allows the SRBA court to enter a decree "subject to the terms of the license to appropriate water that is ultimately issued" for these rights where proof of beneficial use was filed after November 19, 1987. In other words, when proof of beneficial use for a permit is filed **after** the commencement of the SRBA, the license for the water right may be issued after the SRBA decree, and the decree is ultimately subject to the terms of the license.

There is no such discretion either for IDWR or the SRBA court as to water rights where proof of beneficial use for the statutory permit was filed **on or before** November 19, 1987, the commencement date of the SRBA. Idaho Code § 42-1420(1)(d) states that, as to water rights

¹ The Sand Springs Ranch & Company's Objection states:

- IDWR needs to issue a license for 37-7638 as a primary ground water right for 270 acres.
- IDWR has received all of the necessary documentation to license this water right including proof of beneficial use, Sand Spring Ranch & Co.'s August 31, 2005 response to the Application for Amendment of Permit 37-7638 (Attachment A to the Objection), and the March 22, 2006 Affidavits of William Sweet and Bonnie Sweet (Attachments B and C to the Objection).
- This information was provided to IDWR during the final licensing process and prior to the issuance of the Director's Report for 37-7638.
- Issuance of the license and conformation of this recommendation to the license would very probably make this objection unnecessary.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the _____ day of October 2007, I caused a true copy of the foregoing **REQUEST FOR HEARING TO DETERMINE STATUS OF LICENSURE PROCEEDINGS** to be deposited in an official U.S. Post Office box with First Class postage affixed on the following:

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