

Gibson, Deborah

From: Kathy Gliksman [kathleen1387@cox.net]
Sent: Thursday, September 20, 2007 7:10 PM
To: Kathy Gliksman; Merritt, Allen
Cc: Jock Slavin; Bittner; Carol Kingston; Gary/Dani; lhawkins@ida.net; Leslie; Tommy Thompson; Gibson, Deborah; Spackman, Gary; Tuthill, Dave
Subject: Re: Request for Clarification of Preliminary Order

Mr. Merritt et al,
My apologies for not attaching the letter the first time. Please see the attached letter.
Thank you,
Kathleen Gliksman

- ---- Original Message ----

From: Kathy Gliksman
To: Merritt, Allen
Cc: Jock Slavin ; Bittner ; Carol Kingston ; Gary/Dani ; lhawkins@ida.net ; Leslie ; Tommy Thompson ; Gibson, Deborah ; Spackman, Gary ; David.Tuthill@idwr.idaho.gov
Sent: Thursday, September 20, 2007 5:47 PM
Subject: Request for Clarification of Preliminary Order

Dear Mr. Merritt,

I have attached a letter in response to your email which said that you had sent my letter and one from Leslie Shumate to Shelley Keen. This email is being sent to all of the parties involved in your Preliminary Order regarding Permits 75-7052 and 75-7589. This email will serve as certification of service for all parties involved as evidenced by the valid email addresses above.

Kathleen Gliksman

9/21/2007

September 20, 2007

Mr. Allen Merritt
State of Idaho
Department of Water Resources
1341 Fillmore Street
Suite 200
Twin Falls, Idaho 83301-3380

RE: Preliminary Order for Amendments of Permits 75-7052 and 75-7589
Petition for Clarification

Dear Mr. Merritt,

Under Rule 770. of the Rules of Procedure of the Idaho Department of Water Resources, "Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final." I believe, particularly in the above case where the decision is preliminary and still in its appeal period, that Rule 770. also carries with it the reasonable expectation that the author of the decision would be the one to answer questions regarding clarity. It seems unreasonable therefore that, before an order becomes permanent, it would be sent to another IDWR employee for interpretation.

I, therefore, specifically ask that you, as the hearing officer in the above case and the author of the preliminary order, clarify and/or correct the following portions of your preliminary decision:

1. On Page 1 you state that the proposal was made during the licensing process to change the nature of use for permits 75-7589 and 75-7052 to municipal status. As the Williams Lake Recreational Water and Sewer District had applied for municipal status months prior to the field exam how does this affect the aforesaid statement in your decision
2. On Page 3, number 6 a correction should be made to reflect the fact that the information cited in your preliminary decision was valid for the resort only prior to the end of 1995 when I sold the resort. There is no current information for the resort reflected in your findings of fact. Further, a clarification is required to indicate how the lack of evidence for the period after the end of 1995 affects your conclusions and your preliminary decision.
3. A further correction is required with regard to Page 4, number 20 because the information cited was not current information. While the information in your preliminary decision was accurate with regard to the resort prior to 1995, it was not accurate thereafter. Prior to 1995 the resort depended on the old seasonal water system. After 1995 and currently, the resort, like the private homes at the lake, must now be considered year round.

4. On Page 4, number 17, you state that houses have been relocated as a result of fire and reconstruction. A correction is required because that is not the case. There have been 5 homes that have burned down during my 30 years at the lake. Of those, 3 were neither rebuilt nor moved although the ownership of the land has changed hands. One cabin was on resort property and has been replaced with another cabin in the same spot. The last home to consider that burned down was rebuilt on the same land – if not in the same footprint. There have been no homes relocated because of reconstruction. As a result, a clarification is required to answer the question of whether the hookups that existed to the homes that burned down rightfully go with the land they serviced since there is no precedent for capping the hookup and granting it to someone else?
5. On Page 4 of your order, number 11 under Finding of Facts talks about the BLM's separate water right and that it is for a spring not associated with the springs that the District uses. Under the current BLM/District agreement (which provides that our transmission lines can cross BLM land and that the District, in exchange, provides water to the BLM campground) the water to the BLM campground is included in our water allotment and is pumped and distributed by our system. A clarification is, therefore required to answer the following questions which arise from the above noted Findings of Fact:
 - a. Is this third spring to be developed to collect in our collection tank and will we then be expected to pump and distribute this water with our limited system?
 - b. What about questions of cross-contamination? Will the BLM water be in addition to our .21cfs or will the total pumped be deducted from our .21cfs?
 - c. Does the BLM intend to build its own water system?
 - d. Will their water right include metering so that monitoring is possible and records can be kept of their totals?
 - e. What if BLM decides to increase its water usage at the campground by adding showers or campsites?
 - f. Are we expected to adjust to their possible increases in consumption under their own water right? I ask this because our pumping capacity, storage capacity and distribution lines are all limited. I also ask this because your preliminary order has eliminated equivalency limits for the District system and adding additional burdens on our system could well be disastrous for the District.
6. On Page 6, under analysis, you state that it is likely that "regulation of these subject rights in the future will be by a watermaster of a water district to be established in the future." A clarification is requested to determine the evidence upon which you base this statement?

7. On Page 6, you also state that "counting of households" etc. should not be a basis for regulation. A correction and/or clarification is requested because this statement does not appear to be based upon the evidence before you with regard to the system involved in this hearing. Perhaps the above statement is true from a water standpoint. However, it is certainly not true from a system standpoint. Since our District was formed, both systems that were built were constructed in emergency situations. If you check the backfiles on each permit, you will find that funding was not available to the District for providing water for vacant lots so the only way to fund the systems was to limit the number of hookups to the existing users plus a small number for growth during the development period. In other words, in order to finance the building of the system the number of existing homes was crucial. Without those numbers, there would have been no system. Also then, the size and capacity of the system was limited as a consequence because it certainly did not make sense to develop a system that could pump water to say 500 users when in fact there were only 60 some users who would be expected to pay for that system. It did also not make sense for IDWR to grant a water right with a water limit for 500 users when they didn't exist and were unlikely to exist. This was true particularly in light of the fact that downstream users were vehemently protesting. Therefore the requested clarification and/or correction is critical to the future operation of this water system.
8. On the actual Water Right Licenses it states that this license is subject to all prior water rights. Could you please clarify whether that includes hydroelectric rights?
9. On page 9, number 2 under conditions of approval allows stockwatering for stock "associated with the households." The clarification requested is whether that would include the horses and pack strings of a homeowner who is an outfitter? Would it include all the stock of a homeowner who is a breeder? In other words would the water system be open to businesses run on private household land which obviously would require significantly more water useage than contemplated in the system as used prior to your preliminary decision.
10. Would you please clarify what types of meters would be IDWR approved for our system? Since a bucket and stopwatch were mentioned at the hearing would this method be an acceptable form of metering in this case? Given the potentially serious changes to the system and how it operates given your preliminary decision, the metering system is of significant importance.

Given that this is a formal request for clarification and/or correction of your preliminary decision, it is my understanding that these requests must be addressed directly by yourself as the hearing officer and not by any other person or persons including your staff.

I look forward to your responses to these requests for clarification and/or correction and thank you in advance for them.

Kathleen Gliksman