

Nelson, Dan

To: T Scanlan

Subject: RE: 1/2 acre transfer

Hello Terry,

The limitation of transferring a water right under 1 acre of ground is found on Pages 2 and 3 of the transfer memo under Changes in Place of Use. We have already had a couple of tests on this issue that we have tried to send through the State Office staff, and they are very set on this issue. The domestic exemption restriction is found on page 11 and 12 in the same memo.

I also wanted to let you know that I did appreciate your questions on the Champion Homes adjudication claims. It gave me the opportunity to research this issue, and clarify for myself what the law actually states. I had to sit down with Jan Shurte to ensure that I was telling you the correct things and referecing the correct codes. This helps me to explain these things better in the future. So, please don't apologize for asking good questions. I would like to help clarify a little further chapters 42-1401 through 42-1428. These are the chapters in Idaho Code that deal directly with the Snake River Basin Adjudication, and they sort of stand on their own merit. So you have to read through the entire chapter to understand what is going on. The definitions for these statutes are not the same as the statutes for transfers and permitting, so you have to read 42-1401 to understand what they are talking about. Idaho code 42-1401A (4) states that any reference to the words "Domestic" in 42-1414(i) refers only to those rights described in 42-111. No matter what you call the use for a water right the \$25.00 fee is only used for those rights subject to 42-111, any rights that don't fit the 42-111 definition need to be treated as commercial or municipal rights, even though their use is listed as domestic. 70

I hope this helps. If it doesn't, I would like to try to set up a time that you can speak with Jan Shurte about this issue. She did a very good job of helping me through ~~this~~ *this scenario*. I am more than willing to set up a meeting with you and her if you think it will help.

-----Original Message-----

From: T Scanlan [mailto:tscanlan@spfwater.com]

Sent: Wednesday, February 16, 2005 6:15 PM

To: 'Nelson, Dan'

Subject: 1/2 acre transfer

Dan -

I was trying to find a reference to the prohibition on transfers of less than 1 acre. Can you tell me where to find it?

Terry

2/17/2005

Nelson, Dan

From: Nelson, Dan
Sent: Wednesday, February 16, 2005 4:14 PM
To: 'Terry Scanlan'
Subject: RE: Additional Information

Terry,

I am sorry, my earlier information was confusing, but when you first asked me to address this issue you asked that I give you the short version. I guess I was a little too brief, so I am afraid I am going to have to give you the long version.

Your client paid a fee for their adjudication claims of \$25.00 each for both 67-7124 and 67-7128. Idaho code 42-1414 (i) states that claims for domestic and/or stockwater uses are required to pay a \$25.00 fee. Idaho code 42-1401A (4) defines domestic use for the purpose of chapter 42-1400 through 42-1428 as "domestic use is defined in section 42-111, Idaho Code. Idaho Code 42-111 (b) limits a commercial type of use to 2,500 gallons per day. The Idaho Rules of Procedures 37.03.01 030 01 also limits the adjudication staff to viewing domestic uses to the definition in 42-111 or to a maximum of 13,000 gpd single family households and stockwater and 2,500 gpd for all other uses.

Therefore, by paying the \$25.00 fee, your client has further defined their water rights to be limited to 2,500 gallons per day as described in Idaho Code 42-111. The payment of this fee overrides any past licensing exams or decrees. The reason the fee overrides everything else is because your client has basically told us that they do not want to pay for the full water right as listed on the license or decrees, but just that portion defined in Idaho Code 42-111. I am sure this is just a misunderstanding, but we cannot allow the full licensed amounts to be decreed unless the full fee is paid.

To answer your question on the subdivisions. If you review the above codes, you will notice that municipalities are treated much like a commercial use. They are not allowed to pay the minimum \$25.00 fee, unless they want the entire water use limited to a maximum of 13,000 gallons per day. The same holds true for a multi home subdivision. Unless the entire subdivision wants to be limited to 13,000 gallons per day instead of 13,000 gallons per day per home, they need to pay the full fee required under 42-1401A, which is based on the diversion rate. This has been the way the fees and recommendations have been handled since the beginning of the adjudication process.

The use that your client has is actually a commercial use. It has always been a commercial use, and I recommend that you take the proper steps change the adjudication claim so it is described that way to avoid the confusion described above by your clients, and prevent anything may future explanations to fit with changing administrative memorandums, rules and statutes. During the time that these water rights were licensed, it was common practice to call small commercial uses supplying water mainly for restrooms and drinking fountains domestic, even though they used more than the 2,500 gallons per day. After observing the complications that arise by calling these uses domestic, we now try to convince all water users to call these uses commercial, and avoid the confusion your clients are currently going through.

Craig has informed me that you can change the use at this time to a commercial use, which I strongly suggest you do. You will need to provide evidence that the use is actually a commercial use. This evidence could be an affidavit from the owner stating that these uses have been used in a factory setting as described in the departments beneficial field exam report. This would draw attention to field exam that clearly states that this use was for a commercial use.

My main concern is that our new transfer memo clearly states that we cannot process a transfer on a domestic use. The Western Region office's interpretation of this portion of the memo is that it relates only to domestic water rights as described in 42-111. However, we have found that in the last few months our State Office staff are interpreting the memo more literally than we anticipated. The main reason for this is that they are trying to maintain a consistency across the state for water right transfers. Transfer issues are much stricter in the Eastern Snake Plain Aquifer area with the recent water disputes, and we are finding ourselves being required to adhere to the same standards as the other Regions.

Terry, I hope this clarifies these issues. The filing fee and domestic limitation issue is not a new one, and has been around since the beginning of the adjudication. The issue about not allowing domestic uses to be involved in a transfer has existed since the transfer processing memo was adopted in 2002. The only issue that is really negotiable is leaving the use description as a domestic use instead of changing it to a commercial use. I feel it would be in your client's best interest to seek to change the record, or you could be facing similar troubles regarding this description down the road. It may make future water right work easier to change the use to its correct description.

If you have any further questions, please contact me and I will do my best to answer your questions.

Daniel A. Nelson
Senior Agent
Western Region
Idaho Department of Water Resources

-----Original Message-----

From: Terry Scanlan [mailto:TScanlan@spfwater.com]
Sent: Wednesday, February 16, 2005 11:26 AM
To: Nelson, Dan
Subject: RE: Additional Information

Dan -

I don't see how these rights are subject to the domestic limitation in 42-111. My reading of 42-111 is that it refers to uses that are restricted to less than 2500 gpd, which these rights are not. Nor are these rights a combination of exempt domestic uses as defined under 42-111(3). These rights were developed and licensed under the mandatory application and permit process. Maybe I incorrectly filed the claims? I don't see where I listed the annual volumes on claims 7125, 7126, and 7128, but as you pointed out they are licensed for more than the 2500 af volume. There is no volume on the license for 7124, but there also is not a limitation of 2500 gpd.

I am confused. I think I see where Craig is coming from in terms of adjudication, as 42-111 references 42-1401A (and vice versa). However, how does the adjudication handle domestic use for large multiple home subdivisions with public water systems? These uses don't meet the requirements of 42-111 either.

I'm not trying to cause trouble here, but I am reluctant to go back to Champion with another change if we don't need to. The fee is not an issue, but I don't want to amend if I can avoid the hassle.

Terry

-----Original Message-----

From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]
Sent: Monday, February 14, 2005 9:35 AM
To: Terry Scanlan (E-mail)
Subject: Additional Information

Hello Terry,

I passed this email by Craig to ensure that said everything correctly, and of course I didn't. You are going to need to send some type of evidence that these uses are actually commercial uses. I would suggest a statement and reference to the field exam that clearly shows that these rights were licensed for a commercial type use. I would mention that these should actually be referred to a commercial use, since more than 2500 gallons per day have been used as allowed by the licenses, which grant volumes above the maximum 2.8 afa for a commercial domestic use.

Unfortunately, domestic use was a common verbiage used several years ago that is now causing problems with small commercial type uses.

Hopefully, we
can get this clarified and taken care of fairly easily. I am sorry for
the
inconvenience.

Daniel A. Nelson
Senior Agent
Western Region
Idaho Department of Water Resources

> -----Original Message-----

> From: Nelson, Dan

> Sent: Monday, February 14, 2005 9:12 AM

> To: Terry Scanlan (E-mail)

> Subject: Champion Homes Transfer

>

> Hello Terry,

>

> I received the initial review of the adjudication claims for Champion
> Homes. In speaking with Craig Saxton, claims 63-71224 and 63-7128
were

> filed as domestic water rights subject to the domestic definition
listed

> in Idaho Code subsection 42-111. This means that each of these claims
> will be limited to 2,500 gallons per day, and cannot be included in
the

> transfer. The departments current transfer memo does not allow a
domestic

> water rights to be involved in a transfer, since a new domestic use
can be

> attained. Unfortunately, this will reduce the annual volume of these
two

> rights to 2.8 afa each.

>

> In order to avoid this situation, I would like to suggest that you
amend

> the three water rights to list the use as commercial instead of
domestic,

> and pay the needed fees to make these rights a standard commercial use
and

> not a domestic use. This should remove any confusion associated with
> these rights in regard to the amount of water that can be diverted,

and

> would actually list the proper use (commercial) for these rights. In

> order to change these you will need to amend the use to commercial and

pay

> the following fees:

>

> 67-7124 - \$29.00

> 67-7128 - \$30.00

> 67-7126 - \$2.00 (please note that the fee for this right was paid
> for a commercial type use, but was short by \$2.00).

>

> If you have any questions, please let me know. As soon as we get the
> adjudication claims clarified, we can proceed with processing. I will

> hold the applications for 30-days to allow you time to put this
> information together. If you need additional time, please contact me

and

> make a written request for additional time.

>

> Thank you.

>

> Daniel A. Nelson

Nelson, Dan

To: Terry Scanlan

Subject: RE: LDS Water Right Transfers

Hi Terry,

Giving another 30 days won't be a problem. I will set the need by date to 4/29/2005.

Thank you

Daniel A. Nelson
Senior Agent
Western Region
Idaho Department of Water Resources

-----Original Message-----

From: Terry Scanlan [mailto:TScanlan@spfwater.com]

Sent: Monday, March 14, 2005 8:29 AM

To: Nelson, Dan

Subject: RE: LDS Water Right Transfers

I spoke with my contact at Champion Homes about it on Friday. He indicated that the revised claims have been sitting on someone's desk, but that they will try to get them signed and submitted ASAP. Better give me another 30 days on them as well. As always, thank you for your patience.

-----Original Message-----

From: Nelson, Dan [mailto:Dan.Nelson@idwr.idaho.gov]

Sent: Monday, March 14, 2005 7:42 AM

To: Terry Scanlan

Subject: RE: LDS Water Right Transfers

Hi Terry,

A 30 day extension is not a problem. I will give you until 4/29/2005 to supply the information for the Church's transfers.

I also had my reminder for the Champion Homes information come up today, so you will need to give me an update and ask for more time on that application if needed.

Thank you.

Daniel A. Nelson
Senior Agent
Western Region
Idaho Department of Water Resources

-----Original Message-----

From: Terry Scanlan [mailto:TScanlan@spfwater.com]

Sent: Sunday, March 13, 2005 6:47 PM

To: Nelson, Dan

Cc: Grant Cooper

3/14/2005