



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

PHONE: (208) 525-7161 FAX: (208) 525-7177 WEB SITE: www.idwr.state.id.us

EASTERN REGION

RECEIVED

DEC 08 2005

DEPARTMENT OF
WATER RESOURCES

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

November 28, 2005

Mr. Brent Lowder
935 E. 3000 N. #129
Layton, UT 84040

Re: Use of Water Upon Lands in Grace Idaho.

Dear Mr. Lowder,

This letter was prepared as a follow-up to my personal visit to your property on Friday, November 25, 2005. It was a pleasure to meet you and your son. As promised, I would like to review our discussion so that you may be aware of your options.

The Lowder Property is located at 2270 Bench Lago Road in Caribou County near Grace, Idaho. The property is served by two different water sources, Trout Creek Water Company water line and a domestic well that was drilled only recently.

The property development consists of a trailer house set near the roadway and approximately 5 acres of land that has been landscaped into lawn grasses and ornamental trees. Prior grading of the landscape resulted in areas designated for outdoor activities such as a baseball diamond, a water tubing run, a water slide with pool at the end, and a smaller slide and wading pool. There was also a picnic shelter and several (8-10) RV hook ups that pertained to this area.

Mr. Lowder indicated that the well was not hooked up to any piping or landscape watering system and that it was only accessible from the hydrants that are exposed at the land surface immediately adjacent to the well casing. Otherwise, Mr. Lowder represented that all of the landscaping and facilities were connected to Trout Creek water.

My discussion of use of Trout Creek water with Mr. Lowder depended in part on documentation that has been provided to the department recently by the Trout Creek Water Company. This documentation includes the Articles of Incorporation, By-Laws of the Trout Creek Water Company, a blank Users Agreement, and selected Water Deeds of persons participating in the Trout Creek Water Company.

The Trout Creek Water Company has not filed any transfers or Applications for Permit for the water company with the Idaho Department of Water Resources. It appears that the water company is operating without benefit of water right authorization from the State of Idaho. Discussions with representatives of the Trout Creek Water Company indicate that the company wishes to remedy water right issues as soon as possible.

Since the majority of the water used for the Lowder Property comes from the Trout Creek Pipeline, it is important that the rights to divert water from such be discussed. Assuming that the necessary water right transfers can be accomplished for Trout Creek Water Company, the regulation of the water and usage will fall upon the company's representative and will be beyond the authority of the Department. However, the By-laws of the company specifically state that the water is to be used for, "culinary water for use in one home and necessarily related out buildings, only." No provisions in the By-laws describe irrigation of lands or landscaping in any way, shape, or form.

The presence of the domestic well is another matter. Idaho Code 42-111 defines that a "domestic use" of water for a residence is at a diversion rate of 0.04 cfs, a daily volume limit of 13,000 gallons per day and the total irrigation of ½ acre of lawn or garden. The code further indicates that domestic rights cannot be put together with other domestic rights to accumulate a larger right or be transferred to another use.

The landscaping areas of the Lowder property exceeds the domestic limit of ½ acre set by Idaho code 42-111. At the present, there does not appear to be any irrigation water that pertains to the Lowder Property. Since the property falls within the bounds of the Bear River Management Plan, the only option available for irrigation of the property would be to purchase a water right from another and transfer the water to the property. This could be accomplished in one of two ways. One would be to physically move water to the Lowder property through a conveyance system of a ditch, pipeline, or otherwise. The other option would be to purchase a water right that could either be retired or allowed to run freely to the Bear River or Bear Lake (in accordance to the Bear River Management Plan) as mitigation for the new ground water well that was recently drilled and would then be used to irrigate the landscaped areas. The first option would require an approved transfer from the department. The latter option would require an approved application for permit accompanied by an acceptable Mitigation Plan prepared by a qualified consultant (Hydrologist or Engineer). Certainly, both options have limitations.

Since you indicated that you are using Trout Creek Water to irrigate your development, and Trout Creek Water Company does NOT have a valid water right to do so, I formally request that you discontinue to irrigate from that source. If you wish to irrigate ½ acre of landscaping from the well, you may do so. Other options for irrigation may be available as explained above but are entirely dependant upon your actions.

If you have any questions in this regard, I hope that you would feel free to contact me. I can be reached at (208) 525-7161.

Sincerely,

A handwritten signature in black ink that reads "W. Roger Warner". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

W. Roger Warner
Water Rights Supervisor – Eastern Region

Cc: President of Trout Creek Water Company, Grace Idaho (w/o enclosures).
Shelley Keen, Water Right Supervisor, Boise (w/o enclosures).
John Goodell, P.O. Box 1391, Pocatello, ID 83204 (with enclosures).

Enclosures: Copy of Idaho Code 42-111
Copy of Application for Transfer with instructions
Copy of Application for Water Right with instructions,
Copy of Bear River Management Plan (associated documents located at:
<http://www.idwr.idaho.gov/water/rights/>).