

Cefalo, James

From: Cefalo, James
Sent: Wednesday, June 24, 2020 9:55 AM
To: 'rshively@mudlake.net'; 'Spencer, Steven M -FS'; 'jgough@fs.fed.us'
Subject: Application for Amendment of Permit 75-13989 (Shively)

Dear Parties:

The Department is resuming the processing of the above-referenced application. I hope the following summary refreshes your recollection of the contested case:

On May 8, 2001, William and Janice Shively ("Shively") filed Application 75-13989, seeking a permit to divert water from a spring for stockwater and domestic use. According to the application and the associated map, the proposed source (spring) was located on the Shively property. The application was approved and Permit 75-13989 was issued in July 2001. Shively filed proof of beneficial use on June 15, 2006. The Department completed a beneficial use field exam for Permit 75-13989 in August 2008. The field examiner found that Shively had not developed a spring on their property, but had instead connected to an existing pipeline from a spring located on U.S. Forest Service ground. The spring is the authorized point of diversion for water right 75-4287, which is held by the Forest Service.

On September 21, 2011, Shively filed an Application for Amendment, proposing to amend the point of diversion for Permit 75-13989 to describe the authorized point of diversion as the spring located on the Forest Service land. The Department published notice of the Application for Amendment pursuant to Idaho Code, Section 42-211. A protest was filed by the Forest Service.

Janice Shively has asked her son, Robert, to represent the Shively family in the contested case. The Shively family has agreed to establish their own pipeline to the spring and restore the Forest Service pipeline to its original condition. An email from Steve Spencer (USFS) suggests that the parties would be able to resolve the matter without a hearing. Shivelys have not yet built their own pipeline.

Because of the large number of contested cases before the Department, we generally give parties every opportunity to reach a private settlement before pushing for an administrative hearing. It has been eight years since the contested case was initiated. If the parties have been unable to find a resolution in eight years, it seems unlikely that a private resolution is possible. I would like to move this case to an administrative hearing. The first step is conducting a pre-hearing conference to discuss the issues of the case and set a hearing date. I would like to hold the pre-hearing conference before the end of the summer. **Please let me know, by email, the days you are available to participate in a pre-hearing conference in August.** The pre-hearing conference will likely be conducted by telephone, so no travel will be required for the meeting.

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