

Peppersack, Jeff

From: Peppersack, Jeff
Sent: Tuesday, September 05, 2017 2:04 PM
To: Cefalo, James
Cc: Keen, Shelley
Subject: RE: Question regarding APOD condition language (Suez's IMAP proceeding) [IWOV-GPDMS.FID508386]

James,
The recent orders issued for City of Meridian and City of Ketchum are germane to the discussion. Here's links to both. Transfer 79779 (Meridian) is [\\dwrboifs01\DocsData\\$\WATERRIGHTS\63\DJUDD\z0sj01 .PDF](#). Transfer 80621 (Ketchum) is [\\dwrboifs01\DocsData\\$\WATERRIGHTS\37\DJUDD\z27q01 .PDF](#). If we haven't revised the standard conditions, we should do that.
Jeff

From: Cefalo, James
Sent: Tuesday, September 05, 2017 12:53 PM
To: Christopher H Meyer <ChrisMeyer@givenspursley.com>; Chris M. Bromley Esq. (cbromley@mchughbromley.com) <cbromley@mchughbromley.com>; John Roldan - City of Boise (Business Fax) <IMCEAFAX-John+20Roldan+20P+2EE+2E+40+2B1+20+28208+29+20433-5650@givenspursley.com>; Charles L. Honsinger Esq. (honsingerlaw@gmail.com) <honsingerlaw@gmail.com>; Abigail R. Germaine Esq. (agermaine@cityofboise.org) <agermaine@cityofboise.org>; Barker, Albert (IWRB Member) <apb@idahowaters.com>; Andrew Waldera <andy@sawtoothlaw.com>; Brent Orton <borton@cityofcaldwell.com>; Bryce Farris <bryce@sawtoothlaw.com>; Charles Honsinger <honsingerlaw@gmail.com>; Cherese McLain <cdm@msbtlaw.com>; Christopher E. Yorgason <chris@yorgasonlaw.com>; Gail McGarry <emcgarry@usbr.gov>; Gordon Law <gordon@cityofkuna.com>; Kathleen Carr <kathleenmarion.carr@sol.doi.gov>; Kyle Radek <kradek@meridiacity.org>; Matt Howard <mhoward@usbr.gov>; Richard T. Roats (kunaattorney@icloud.com) <kunaattorney@icloud.com>; Richard T. Roats Esq. (rroats@kunalD.gov) <rroats@kunalD.gov>; Sarah A. Klahn Esq. (sarahk@white-jankowski.com) <sarahk@white-jankowski.com>; Shelley Davis <smd@idahowaters.com>; Stephan Burgos <sburgos@cityofboise.org>; Warren Stewart <wstewart@meridiacity.org>
Cc: Pat Hughes (pchendley@comcast.net) <pchendley@comcast.net>; Lori Gibson <lorigibson@givenspursley.com>; Michael P. Lawrence <mpl@givenspursley.com>; Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>; Peppersack, Jeff <Jeff.Peppersack@idwr.idaho.gov>; White, Kimi <Kimi.White@idwr.idaho.gov>; Miller, Nick <Nick.Miller@idwr.idaho.gov>; Cox, Sharla <Sharla.Cox@idwr.idaho.gov>; Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; Gregory P. Wyatt (greg.wyatt@suez-na.com) <greg.wyatt@suez-na.com>; Roger D. Dittus (roger.dittus@suez-na.com) <roger.dittus@suez-na.com>
Subject: RE: Question regarding APOD condition language (Suez's IMAP proceeding) [IWOV-GPDMS.FID508386]

Chris,

I appreciate your reminder. An informal email with all of the parties included works just fine. The condition language quoted in your email is still the language used by the Department for APODs. We have a couple of different versions of the condition, depending on the complexity of the original water rights. Conditions 208 thru 211 refer back to the original point of diversion(s) for the water right. Condition 226 accomplishes the same goal as conditions 208 thru 211, but instead refers back to a previous approval or decree.

Condition 208: "To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from _____ Well No. _ located in T___, R___, S___, ____."

Condition 209: "To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from _____ Well No. _ located in T___, R___, S___, _____, _____ Well No. _ located in T___, R___, S___, _____ and _____ Well No. _ located in T___, R___, S___, ____."

Condition 210: "To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from _____ Well No. _ located in T___, R___, S___, _____ which was replaced by _____ Well No. _ located in T___, R___, S___, ____."

Condition 211: "To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from _____ Well No. _ located in T___, R___, S___, _____, _____ Well No. _ located in T___, R___, S___, _____ and _____ Well No. _ located in T___, R___, S___, _____. _____ Well Nos. __, __ and __ were replaced by _____ Well No. _ located in T___, R___, S___, ____."

Condition 226: "To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, this right retains its original priority for well locations authorized under this right as identified in <decree, license or Transfer XXXXX> dated <XX-XX-20XX>."

I hope this information is useful for your ongoing discussions. I hope to have an order out by the end of next week, addressing the pending procedural motions and setting the November 9th status conference.

James Cefalo

From: Christopher H Meyer [<mailto:ChrisMeyer@givenspursley.com>]

Sent: Tuesday, September 05, 2017 11:26 AM

To: Chris M. Bromley Esq. (cbromley@mchughbromley.com) <cbromley@mchughbromley.com>; John Roldan - City of Boise (Business Fax) <IMCEAFAX-John+20Roldan+20P+2EE+2E+40+2B1+20+28208+29+20433-5650@givenspursley.com>; Charles L. Honsinger Esq. (honsingerlaw@gmail.com) <honsingerlaw@gmail.com>; Abigail R. Germaine Esq. (agermaine@cityofboise.org) <agermaine@cityofboise.org>; Barker, Albert (IWRB Member) <apb@idahowaters.com>; Andrew Waldera <andy@sawtoothlaw.com>; Brent Orton <borton@cityofcaldwell.com>; Bryce Farris <bryce@sawtoothlaw.com>; Charles Honsinger <honsingerlaw@gmail.com>; Cherese McLain <cdm@msbtlaw.com>; Christopher E. Yorgason <chris@yorgasonlaw.com>; Gail McGarry <emcgarry@usbr.gov>; Gordon Law <gordon@cityofkuna.com>; Kathleen Carr <kathleenmarion.carr@sol.doi.gov>; Kyle Radek <kradek@meridiancity.org>; Matt Howard <mhoward@usbr.gov>; Richard T. Roats (kunaattorney@icloud.com) <kunaattorney@icloud.com>; Richard T. Roats Esq. (rroats@kunalD.gov) <rroats@kunalD.gov>; Sarah A. Klahn Esq. (sarahk@white-jankowski.com) <sarahk@white-jankowski.com>; Shelley Davis <smd@idahowaters.com>; Stephan Burgos <sburgos@cityofboise.org>; Warren Stewart <wstewart@meridiancity.org>; Cefalo, James <James.Cefalo@idwr.idaho.gov>

Cc: Pat Hughes (pchendley@comcast.net) <pchendley@comcast.net>; Lori Gibson <lorigibson@givenspursley.com>; Michael P. Lawrence <mpl@givenspursley.com>; Baxter, Garrick <Garrick.Baxter@idwr.idaho.gov>; Peppersack, Jeff <Jeff.Peppersack@idwr.idaho.gov>; White, Kimi

<Kimi.White@idwr.idaho.gov>; Miller, Nick <Nick.Miller@idwr.idaho.gov>; Cox, Sharla <Sharla.Cox@idwr.idaho.gov>; Keen, Shelley <Shelley.Keen@idwr.idaho.gov>; Gregory P. Wyatt (greg.wyatt@sezn-na.com) <greg.wyatt@sezn-na.com>; Roger D. Dittus (roger.dittus@sezn-na.com) <roger.dittus@sezn-na.com>

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Special Master Cefalo,

I am writing as a follow-up to the IMAP status conference on August 24, 2017.

Some questions were asked about the standard "APOD condition language," which Suez has agreed would be acceptable. As I recall, you said that would look into whether the language used in the past is still the "standard" language.

The language which appears in IDWR's existing municipal rights via the SRBA process is:

"To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right at [name of well] located in [quarter-quarter description]."

This is the same language litigated (and approved) in *In Re SRBA*, Case No. 39576, Subcase Nos. 29-00271 *et al.* (Idaho, Fifth Judicial Dist., Nov. 9, 2009 and April 12, 2010) (Melanson, J.), *aff'd*, *City of Pocatello v. Idaho*, 152 Idaho 830, 275 P.3d 845 (2012) (Eismann, J.).

I am happy to provide some further comment on how this language (which was developed in the context of accomplished transfers) might be employed in the IMAP. But first I wanted to confirm that this is still the Department's preferred or "standard" language.

I trust you do not object to this informal communication.

I am copying all parties.

I have no objection to your adding this email to the administrative file, if you deem appropriate.

-Chris

CHRISTOPHER H. MEYER

GIVENS PURSLEY LLP

601 W Bannock St, Boise, ID 83702 / PO Box 2720, Boise, ID 83701
direct 208-388-1236 / cell 208-407-2792 / assistant 208-388-1227 (Lisa Hughes)
chrismeyer@givenspursley.com / www.givenspursley.com

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