



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
LAWRENCE G. WASDEN

April 24, 2003

David L. Negri, Esq.  
United States Department of Justice  
Environment and Natural Resources Division  
General Litigation Section  
550 W. Fort St. MSC 033  
Boise, Idaho 83724

Re: SRBA Subcase No. 63-9642 (Middle Fork Associates)

Dear David:

On January 30<sup>th</sup> the U.S. Forest Service filed an objection to the above-referenced water right recommendation. The recommendation filed in the SRBA Court by the Idaho Department of Water Resources (IDWR) was based on the original water right permit, issued in 1980, and held by claimant Middle Fork Associates. IDWR has now conducted its licensure field examination of that permit and is preparing to issue a license for the water right. Based upon the field examination, and a subsequent amendment to the permit filed by Middle Fork Associates to bring the permit into accordance with the findings of that field examination, the license that IDWR proposes to issue differs considerably from the original permit.

I am enclosing a copy of the proposed license for you to review with your client for purpose of determining which parts—if any—of the Forest Service's objection might be obviated by its issuance. If the proposed license completely resolves the objection, the claimant, the United States, and IDWR should be able to enter into a Standard Form 5 describing the right in the SRBA per the terms of the license. If on the other hand the proposed license does not completely resolve the objection, IDWR can correct the proposed license to incorporate any changes to the water right that might result from settlement negotiations or other proceedings in the SRBA.

Summarized below are IDWR's bases for describing certain elements of the water right as shown in the proposed license. These elements are keyed to the elements that the Forest Service listed in its objection.

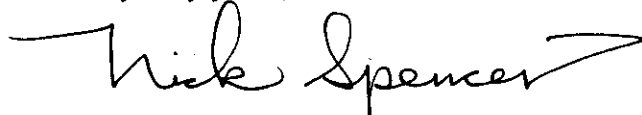
1. **SOURCE AND POINTS OF DIVERSION.** The proposed license lists these as being both Phifer Creek and ground water. The licensure field examiner found that the ground water source/POD is a six inch artesian well flowing at 31 gpm. This well is located within the boundaries of the Wishful No. 2 unpatented mining claim (see below). It apparently was originally drilled for use by the Weatherby Sawmill, which no longer exists. The examiner found that the water from the well is used for mining sifting and cleanup via 75 feet of 2-inch pvc portable hose. Additionally, the examiner found that water from Phifer Creek is being diverted by means of a five horsepower portable pump through 2000 feet of pvc pipe into a small settling pond, where it is used for material sifting using trommels and jigs. The Phifer Creek POD is located outside the boundaries of the three mining claims in question (see below), presumably on Forest Service land.
2. **QUANTITY.** The proposed license lists the diversion rate as 0.44 cfs. This is the quantity measured by the examiner. The artesian well was measured at 0.07 cfs; the Phifer Creek POD was measured at 165 gpm, or 0.37 cfs. A volumetric limitation also is included on the proposed license. It was calculated using the total instantaneous diversion rate measured from both PODs, diverted constantly for ten hours per day throughout the 215 day season of use. (0.44 cfs x 10 hpd x 215 days)
3. **PRIORITY DATE.** The priority date listed on the proposed license is November 6, 1980, the date of the application for permit. Although at one point the permit did lapse, it subsequently was reinstated.
4. **PLACE OF USE.** The legal description of the place of use lists the quarter quarter sections containing unpatented mining claim nos. 181283, 181284, and 181285, also known as the Wishful 1, 2, and 3. IDWR staff verified with the BLM that these three claims are up to date and in compliance with BLM requirements.

Please review the proposed license and the above summary with your client. Let me know whether this might resolve the Forest Service objection or any part of it.

David L. Negri, Esq.  
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Thank you very much. I look forward to hearing from you.

Very truly yours,

A handwritten signature in black ink that reads "Nick Spencer". The signature is fluid and cursive, with a long horizontal stroke at the end.

NICHOLAS B. SPENCER  
Deputy Attorney General  
Idaho Department of Water Resources

Enc: 1

Cc: Middle Fork Associates c/o Jane Stone  
Kay Walker  
Jan Shurte