



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

March 3, 2004

LYNN HARMON, MANAGER
BIG WOOD CANAL COMPANY
PO BOX C
SHOSHONE, ID 83352

Re: Proposal to Divert Water from the Little Wood River for Recharge

Dear Mr. Harmon:

The Idaho Department of Water Resources (IDWR) was verbally informed about a proposal to divert a stockwater right owned by the Big Wood Canal Company for recharge. On March 1, 2004, I spoke to Mike Faulkner, a member of the Big Wood Canal Company's Board of Directors, and you about the proposal. You and Mr. Faulkner both informed me that the board had approved the immediate diversion of 75 cubic feet per second of Little Wood River water for recharge.

You and I identified adjudication claim no. 37-13111 (statutory claim no. 37-4170) as the water right under which the diversion could be made. Claim no. 37-13111 asserts that a water right for stockwater was perfected by diversion of 75 cubic feet per second and beneficial use of the water in 1906. The claim has not been recognized by any water right permit, license, or decree.

A water right cannot be used for a purpose other than the purpose for which it was perfected unless the nature of use of the water right is changed through an approved transfer or the new use is authorized by rental through the water supply bank. These processes require the filing of an application with IDWR and an approval of the application after appropriate review. Most likely, the point of diversion and the place of use would also need to be changed.

In addition, Idaho Code § 42-607 states:

... any person or corporation claiming the right to the use of the waters of the stream or water supply comprising a water district, but not owning or having the use of an adjudicated or decreed right therein, or right therein evidenced by permit or license issued by the department of water resources, shall for the purposes of distribution during the scarcity of water, be held to have a right subsequent to any adjudicated, decreed, permit, or licensed right . . .

Mr. Harmon, Manager
Big Wood Canal Company
March 3, 2004
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Even if the nature of use of claim no. 37-13111 were changed, Idaho Code § 42-607 requires that the beneficial use claim not be diverted until after all permitted, licensed, and decreed water rights have been delivered. Owners of downstream licensed water rights have already expressed concern about delivery of claim no. 37-13111 for recharge.

After discussions with me and others in IDWR's state office, Allen Merritt of IDWR's Southern Regional Office instructed the watermaster of Water District no. 37, Kevin Lakey, to refuse delivery of surface water for recharge until IDWR: (1) approves a water right to divert water for recharge at a specific point of diversion and apply it at a specific place of use, and (2) determines that the water right is deliverable according to Idaho law.

Sincerely,



Gary Spackman

cc. Kevin Lakey, Watermaster Water District 37
Mike Faulkner

cc. Southern - Allen & Cindy
Jim Lake
David K. Lee