



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

May 23, 2008

Hon. John Melanson
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

RE: Subcase No. 63-3362 (Tyson Fresh Meats, Inc.)

Dear Judge Melanson:

On May 14, 2008, I sent an Amended Director's Report for subcase no. 63-3362 ("ADR") to the Court. The ADR reflected error corrections concerning the Place of Use ("POU") and Point of Diversion elements as well as modified related comments. Please see the cover letter for the ADR for additional explanation of the error corrections. It has come to my attention, however, that the ADR inadvertently contained incorrect purposes of use in the POU description. That inclusion was in error. Thus, I am attaching a Second Amended Director's Report. In the Second Amended Director's Report, the Idaho Department of Water Resources ("IDWR") has deleted the purposes of use inadvertently added to the POU that were in error. IDWR presents this Second Amended Director's Report in underline/strikeout format without the POU error as the ADR should have done.

I respectfully request the Court issue an amended partial decree pursuant to Rule 60(a) of the Idaho Rules of Civil Procedure, correcting the errors in the partial decree.

I am sending a copy of this letter to the claimant, so that it will be aware of this inadvertent error. If you should have any questions or comments, please feel free to contact me at (208) 287-4810. Apologies for any confusion this may have caused.

Sincerely,

A handwritten signature in black ink that reads "Andrea L. Courtney".

Andrea L. Courtney
Deputy Attorney General, IDWR

Enclosure

cc: Tyson Fresh Meats, Inc.
Sandy Egbert

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-3362

NAME AND ADDRESS:

TYSON FRESH MEATS, INC
 ATTN: JOHN MEYER
 800 STEVENS PORT DRIVE SUITE 709
 DAKOTA DUNES SD 57049

SOURCE:

Source:

Tributary:

GROUND WATER

QUANTITY:

2.670 CFS

837.000 AFY

diversion rate

Rights 63-07531 and 63-10383 when combined shall not exceed a total
of 5.87 cfs.

under Transfer

The total instantaneous diversion of water from all points of diversion
5442 shall not exceed 10.77 cfs, nor a total combined annual volume of

4403.1 af.

PRIORITY DATE:

07/11/1963

POINT OF DIVERSION:

T01N R02E S6 Lot 2 NWNE
Within ADA County

T01N R02E S6 Lot 3 NENW
Within ADA County

T01N R02E S7 Lot 3 NWSW
Within ADA County

T01N R02E S7 SWSE
Within ADA County

T01N R02E S18 Lot 2 SNNW
Within ADA County

T02N R02E S31 SWSE
Within ADA County

Three (3) points of diversion are located within Lot 3 (NWSW), S07, T01N,
R02E A single new point of diversion is authorized in either the SWSE, S07
or Lot 2 (SNNW), S18, T01N, R02E to provide water that shall not exceed a
temperature greater than 85 degrees Fahrenheit.

PURPOSE AND
 PERIOD OF USE:

Purpose of use

Period of use:

Quantity:

IRRIGATION

4/01 10/31

2.670 CFS

837.00 AFY

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS
 EARLY AS MARCH 1 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15,
 PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE
 OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS
 SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR
 LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A
 PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

PLACE OF USE: IRRIGATION within ADA County

T01N R02E S06 Lot 1 NENE 35.0T01N R02E S06 Lot 2 NWNE 40.0T01N R02E S06 SWNE 40.0T01N R02E S06 SENE 40.0T01N R02E S06 Lot 3 NENW 40.0T01N R02E S06 SENW 40.0T01N R02E S06 NESW 40.0T01N R02E S06 SESW 40.0T01N R02E S06 NWSE 40.0T01N R02E S06 SWSE 39.0T01N R02E S07 NENW 40.0T01N R02E S07 Lot 1 NWNW 40.0T01N R02E S07 Lot 2 SWNW 40.0T01N R02E S07 NESW 40.0T01N R02E S07 Lot 4 SWSW 36.0T01N R02E S07 SESW 32.0T01N R02E S07 SWSE 32.0T01N R02E S18 NENE 32.0T01N R02E S18 NWNE 40.0T01N R02E S18 SENE 40.0T01N R02E S18 NENW 40.0T01N R02E S18 Lot 1 NWNW 40.0T01N R02E S18 Lot 2 SWNW 40.0T01N R02E S18 SENW 40.0T01N R02E S18 NESW 40.0T01N R02E S18 Lot 3 NWSW 40.0T01N R02E S18 Lot 4 SWSW 40.0T01N R02E S18 SESW 40.0T02N R02E S31 NESW 40.0~~T02N R02E S31 NESW 35.0~~T02N R02E S31 Lot 3 NWSW 40.0~~T02N R02E S31 Lot 3 NWSW 38.0~~T02N R02E S31 Lot 4 SWSW 40.0~~T02N R02E S31 Lot 4 SWSW 37.0~~T02N R02E S31 SESW 40.0~~T02N R02E S31 SESW 38.0~~T02N R02E S31 SWSE 40.0~~T02N R02E S31 SWSE 38.0~~1286 ACRES TOTAL~~186 ACRES TOTAL~~

Right 63-03362 is limited to the irrigation of 186.0 acres in the place of use described above in a single irrigation season.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

Wastewater pond is located within Lot 1 (NWNW), S19, T01N, R02E

The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under Right 63-11347 and shall only divert groundwater under this right when water from the appurtenant surface water rights cannot be delivered to the right holder.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.

Rights 63-03362, 63-07531, 63-10383 and 63-11347 when combined are limited to the irrigation of 619.0 total acres under the irrigation components of the rights in the 1286.0 acre place of use described above in a single irrigation season. This condition does not limit the acreage upon which wastewater from the industrial and commercial uses under the rights may be land applied for wastewater treatment purposes to satisfy water quality requirements.

Use of water under Rights 63-07531 and 63-10383 shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

The place of industrial and commercial use authorized by this approval includes land upon which wastewater may be applied for wastewater treatment purposes to satisfy water quality requirements. Water diverted under the industrial and commercial components of Rights 63-07531 and 63-10383 shall not be land applied unless the water is first used for the commercial/industrial purposes as authorized under these rights. A single new point of diversion is authorized in either the SWSE, S07 or Lot 2 (SWNW), S18, T01N, R02E to provide water that shall not exceed a temperature greater than 85 degrees Fahrenheit.

The right holder shall be required to utilize any cold water from the well located in the NENW, S06, T01N, R02E B.M. up to its capacity for irrigation of the place of use under Right 63-11347. The low temperature geothermal well in the NWNE, S06, T01N, R02E B.M. shall only be diverted at the rate equal to the remaining portion of 2.23 cfs not capable of being satisfied by cold water from the well.

Failure of the right holder to comply with the conditions of Transfer 5442 is cause for the Director to rescind approval of the transfer.

If the surface water right (s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, Right 63-11347 to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

~~The total instantaneous diversion of water from all points of diversion under Transfer 5442 shall not exceed 10.77 cfs, nor a total combined annual volume of 4403.1 af.~~

~~Rights 63-07531 and 63-10383 when combined shall not exceed a total diversion rate of 5.87 cfs.~~

~~Right 63-03362 is limited to the irrigation of 186.0 acres in the place of use described above in a single irrigation season.~~

~~Right 63-07531 is limited to the irrigation of 160.0 acres in the place of~~

~~use described above in a single irrigation season.~~

~~Right 63-10383 is limited to the irrigation of 151.0 acres in the place of use described above in a single irrigation season.~~

~~Right 63-11347 is limited to the irrigation of 122.0 acres in the place of use described above in a single irrigation season.~~

~~Three (3) points of diversion are lee~~

~~The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.~~