



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

LAWRENCE G. WARDEN

January 14, 2016

Susan E. Hamlin
Deputy Attorney General
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, ID 83706

RE: Idaho DEQ Notices of Error (94-2144, 94-4244 & 94-4217)

Dear Ms. Hamlin:

In September 2015 you submitted three Notice of Error Replies (NOE) concerning water right claims 94-2144, 94-4244, and 94-4217, on behalf of the Idaho Department of Environmental Quality (IDEQ) to the Idaho Department of Water Resources (IDWR). In all of the NOEs you requested that IDWR change its recommendation concerning the rights.

Concerning the claim at Grouse Creek (94-2144), IDWR cannot change its recommendation. From IDWR's review, it appears the change to aesthetics and wildlife uses from the originally licensed use occurred after 2006. While IDWR is authorized under Idaho Code §42-1425 to recognize changes of use in water rights, these changes must have occurred prior to 2006. Therefore, in order for IDWR to change its recommendation for 94-2144, IDWR needs evidence indicating that the changes occurred before 2006.

Additionally, IDWR cannot change its recommendation for claims 94-4244 and 94-4217 since there is no evidence of beneficial use. Given the extensive remediation in the area, it is not possible to review the historical uses of these rights as they were developed and used prior to 1983. Evidence from IDEQ detailing priority date, point of diversion, place of use, and quantity of water is necessary in order to support the statements made in the NOE letter, allowing IDWR to make recommendations.

IDWR needs the information detailed above no later than February 5, 2016 in order to make any changes prior to issuing the Director's Report. This is an understandably tight timeframe, and IDWR will work with IDEQ if objections to the Director's Report are necessary. Please do not hesitate to contact either Steve Clelland,

water resource agent (208) 287-4913, or me (208) 287-4810 with any questions or concerns you may have concerning the matter.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a cursive 'C' and a long horizontal flourish.

Meghan Carter
Deputy Attorney General