



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 North Skyline Drive, Suite A • Idaho Falls, ID 83402-1718
Phone: (208) 525-7161 • Fax: (208) 525-7177 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

February 15, 2019

G & H Dairy, LLC
c/o John Gomez
299 Addison Ave W
Twin Falls, ID 83301

Certified Mail

RE: Notice of Intent to Void Permit 13-7649

Dear Mr. Gomez:

On May 26, 2005, the Department issued Permit 13-7649 to J7 LLC. Permit 13-7649 bears a priority date of February 20, 2004 and authorizes a diversion rate of 1.00 cfs, an annual diversion volume of 258.7 acre-feet, and the irrigation of 73.9 acres. In 2005, the only way a person could obtain a new irrigation water right was by providing mitigation to offset the new consumptive use. Permit 13-7649 included the following mitigation condition:

To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water right for the purposes and amounts specified below. Moreover, the official record for the following water right will be changed to show that diversion and use of water is not authorized because the rights, or portions thereof, are being dedicated to mitigation purposes.

Right No.	Use Changed to Mitigation	Mitigation Rate	Mitigation Volume	Mitigation Acres
13-2164	Irrigation	0.76 cfs	280.0	80

The land that will no longer be irrigated under this right is located within the W1/2NE1/4; SE1/4NE1/4, Section 1, Township 15 South, Range 38 East, B.M.

If the specified mitigation rights, or portions thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this permit approval shall be reduced by the same proportion as the reduction to the mitigation rights.

Water right 13-2164 (the mitigation right) authorizes the diversion of 0.76 from an unnamed stream for the irrigation of 80 acres. The place of use for water right 13-2164 includes parts of the NWNE, SWNE and SENE of Section 1, T15S, R38E.

The place of use for Permit 13-7649 is located approximately one mile southwest of the place of use for water right 13-2164. At the time Permit 13-7649 was issued, J7 LLC owned the places of use for Permit 13-7649 and water right 13-2164. The mitigation plan proposed by J7 LLC was approved because J7 LLC owned water right 13-2164, which was to be held unused for mitigation.

During my review, I discovered that J7 LLC no longer owns the place of use for water right 13-2164. According to Franklin County taxlot records, the place of use for water right 13-2164 is now owned by the Corporation of the Presiding Bishopric of the Church of Jesus Christ of Latter Day Saints (LDS Church).

Failure to maintain ownership of mitigation water right 13-2164 is a violation of the conditions of permit. In addition, Permit 13-7649 required a measuring device (flow meter) to be installed at the ground water well prior to diversion under Permit 13-7649. There is no measuring device installed at the ground water well. This also constitutes a violation of the conditions of permit. **Pursuant to Idaho Code § 42-219(8), if the Department finds that a permit holder has not complied with the conditions of a permit, the Department may refuse to issue a license and void the permit.**

On May 24, 2017, I notified you of two the issues described above. Shortly thereafter, you hired attorney Adam McKenzie to help you work through the issues. In November 2017, Mr. McKenzie notified me that he had contacted the LDS Church and was negotiating the conveyance of mitigation water right 13-2164 from the LDS Church to G & H Dairy. These negotiations, however, never resulted in an actual conveyance.

I contacted Mr. McKenzie this morning. He told me that he no longer represents G & H Dairy in this matter. According to the Idaho Secretary of State website, G & H Dairy was administratively dissolved in December 2018. It has been eighteen months since I first notified you of the issues associated with Permit 13-7649. The issues have not been addressed. This letter is intended to notify you that the Department will take steps to void Permit 13-7649 if the two issues identified above (ownership of mitigation right 13-2164, flow meter installed at well) are not resolved by March 29, 2019. Please feel free to contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Cefalo', written in a cursive style.

James Cefalo
208-525-7161

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