



State of Idaho

## DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: [www.idwr.idaho.gov](http://www.idwr.idaho.gov)

C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

July 31, 2017

BLAINE COUNTY SCHOOL DISTRICT #61  
118 W VULLION ST  
HAILEY ID 83333

RE: Water Right Permit 37-21742

Ladies and Gentlemen:

On July 11, 2017, I met with Howard Royal to perform water right licensing examinations on several of the schools in your District. One of the permits we examined was permit 37-21742 for the irrigation use at the Carey School Campus. Mr. Royal has graciously provided most of the information required to move forward with licensing of this permit. However, there is one issue that will need a more formal response to move forward with the licensing process.

Permit 37-21742 was approved in area closed to new appropriation due to your submittal of a mitigation plan that mitigated this new permit by changing 20 acres of water right 37-2657B to mitigation by non-use. You purchased the 20 acre portion of water right 37-2657B and filed a change of ownership that split that water right into 37-22204 still owned by Danny and Dustin Smith, and 37-22205 the portion owned by the Blaine County School District #61 for mitigation purposes. The enclosed copy of water right 37-22205 provides that the mitigation use is located in the SW1/4 SW1/4 of Section 3 and NW1/4 NW1/4 and SW1/4 NW1/4 of Section 10 in Township 2 South, Range 21 East. This legal description describes the same lands the original irrigation water right occupied on Danny and Dustin Simpson's farm. I have attached the map that reflects the exact acres there were retired as described in Permit 37-21742. I also included a computer generated report of water right 37-21742.

Permit 37-21742 was approved for 20 acres of irrigation at the Carey School Campus, but according to the field examination performed on July 11, 2017, only 8.7 acres were actually developed. Since only 8.7 acres were developed, then only 8.7 acres need to be mitigated by water right 37-22205. This leaves 11.3 acres of water right 37-22205 that is no longer providing mitigation for permit 37-21742. This creates the assumption that there is no longer a valid water use for the 11.3 acre portion of 37-22205 that is not mitigating the water use for permit 37-21742.

Therefore, there are a couple of options that you have available to you for protecting the remaining 11.3 acres portion of water right 37-22205 not currently being used. The following are your options:

- 1.) **You can change the 11.3 acres not used for mitigation back to supplemental irrigation.** When this situation has happened in the past, the Department generally converts the remaining mitigation right back to its original use. In the case of water right 37-22205 we would change the water right to show 11.3 acres of supplemental irrigation and the remainder as mitigation for permit 37-21742. This can be done during the licensing of the permit without the need of water right transfer and no cost to you. In order to make the changes to water right 37-22205, I will need you to provide me with a map that shows the acres that will remain mitigation, and which acres will be changed back to supplemental irrigation. This map will need to include the number of acres designated for each 40 acre legal description for both the mitigation use and the irrigation use. You can refer to the map mentioned above showing the exact acres currently shown as the mitigation acres.
- 2.) **You can leave the remaining 11.3 acre portion of water right 37-22205 as mitigation.** However, you will need to do something with this mitigation rights reasonably soon. The longer a water right is not used for any purpose, the more difficult it is to resume the use of that water right in the future. You could use this right to mitigate a different water right or some other use that would protect this right. Idaho Code § 42-223 provides a list of exceptions or defenses to forfeiture that may help guide your decision concerning this right if the 11.3 acre portion is left as a mitigation water right.

I will need to know what you decide to do with the 11.3 acre portion of 37-22205 that will not be used for mitigation before I can move forward with licensing permit 37-21742. Therefore, I must request that reply to this letter **within 14 days or by August 14, 2017**. Your response should be detailed enough that we can clearly identify in the water rights the exact location of the 8.7 acre portion of the mitigation water right that used to mitigate 37-21742 and the exact location and use for the 11.3 acre portion that is not used by the permit. We must have a good record of this information to ensure the watermaster can regulate both water rights.

If you have any questions or concerns, please don't hesitate to contact me.

Respectfully;



Daniel Nelson  
Water Right Analyst 3  
Idaho Department of Water Resources  
Email: dan.nelson@idwr.idaho.gov  
Telephone (208) 287-4856  
Fax (208) 287-6700 (attn: Dan Nelson)

Enclosures : Proof Reports for 37-22205 and 37-21742  
Map of Acres retired for mitigation of permit 37-21742

Cc: Howard Royal by email --- Lori Graves SPF Engineering by email.

The following aerial imagery shows the acres mitigated by non-use for water right 37-22205. A similar map can be found in the water right file for permit 37-21742. The irrigation of the lands shown below ceased to allow mitigation of water right permit 37-21742.

