



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER  
Governor

GARY SPACKMAN  
Director

May 24, 2017

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

Dear Mr. Gomez:

I am currently completing a final review of Permit 13-7649 for licensing purposes. Permit 13-7649 is for irrigation at a dairy near Clifton, Idaho. G & H Dairy is the owner of record for the permit. During my review, I discovered two items that must be addressed before a license can be issued. This letter is meant to help you understand the areas of concern and to act as a formal request for additional information.

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<br>to Mitigation | Mitigation<br>Rate | Mitigation<br>Volume | Mitigation<br>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).

Before I can proceed with the licensing of Permit 13-7649, I must confirm that G & H Dairy owns mitigation water right 13-2164. I am concerned that water right 13-2164 was not reserved by J7 LLC when it sold the land in the NE ¼ of Section 1 to the LDS Church. If G & H Dairy does not own water right 13-2164, then the mitigation plan associated with Permit 13-7649 is no longer valid.

Please provide evidence that G & H Dairy owns water right 13-2164 or that G & H has the legal authority to prevent the diversion and use of water right 13-2164. Please provide this evidence by June 20, 2017. If G & H cannot demonstrate ownership of water right 13-2164 or no evidence is provided by June 30, 2017, I will take steps to void Permit 13-7649.

During my review of Permit 13-7649, I discovered one other issue. Permit 13-7649 included the following condition: "The right holder shall maintain a totalizing measuring device of a type approved by the Department as part of the diverting works." Department staff could not locate any totalizing measuring device on the irrigation system. Please provide evidence that a totalizing measuring device has in fact been installed on the irrigation system. Photos and GPS location of the measuring device will be sufficient. This evidence should also be provided by June 30, 2017.

One other area of concern that does not require any action on your part: The mitigation condition from Permit 13-7649 states: "If the mitigation rights . . . are not deliverable due to a shortage of water . . . this permit approval shall be reduced by the same proportion as the reduction to the mitigation rights." Yesterday, I was in the area and visited the unnamed stream point of diversion described in water right 13-2164. There was very little water flowing in the unnamed stream. According to Permit 13-7649, you may only divert ground water to the extent there is water available in the stream. If there are only 50 gallons per minute (0.11 cfs) flowing in the unnamed stream, then you may only divert 50 gallons per minute under Permit 13-7649. Poor flow rates in the unnamed stream may limit the value of water right 13-7649.

I realize that you are two owners removed from J7 LLC and you may not have been aware of the conditions listed on Permit 13-7649 when you purchased the property. IDWR has an obligation, however, to ensure the conditions of the permit are satisfied and that the proposed mitigation plan remains viable. I look forward to your response. Please feel free to contact me directly if you have any questions.

Sincerely,



James Cefalo  
208-525-7161