



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

March 29, 2017

Robert Harris
Holden Kidwell Hahn & Crapo PLLC
1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, ID 83405

RE: Application for Permit 22-7648

Dear Rob:

On March 7, 2017, you filed a written request ("request") for the Department to complete its review of Application for Permit 22-7648. This letter is meant to notify you that the Department will, based on your request, conduct a review of Application 22-7648. Because the application is not being amended, I have decided not to re-publish notice of the application.

Before completing my review of the application, I wanted to give you an opportunity to provide any additional evidence you feel is relevant to the review criteria set forth in Idaho Code § 42-203A(5). Three specific items you may want to address are: (1) Legal access to the proposed points of diversion and place of use, (2) Discrepancies between the proposed place of use and the place of use for existing water rights, (3) Reduction of the quantity of water under existing water rights.

Legal Access

The owner of record for Application 22-7648, Riverside Farms c/o Richard Crapo, no longer owns the property at the proposed points of diversion or place of use. According to Fremont County taxlot data, the property has been divided and is now owned by RGC Farms LLC, Juniper View LLC, Unit 2 LLC, Fromover 9 LLC, and the United States Bureau of Reclamation.

An applicant must demonstrate that an application is filed in good faith and not for speculative purposes. Legal access to the proposed points of diversion and place of use is an important component of the speculation review. Riverside Farms may want to provide statements or letters from the current property owners authorizing access to the properties. Another option would be for Riverside Farms to assign the application to the current property owners.

Place of Use Discrepancies

Until recently, the proposed place of use was irrigated with water rights 22-2294 (4/27/1960, 4.86 cfs, 792 acres) and 22-7057 (5/23/1972, 0.95 cfs, 831 acres). In 2016, these two rights were each split into five separate rights as the larger farm was divided between family members. However, the 831 irrigated acres described in water rights 22-2294 and 22-7057 (pre-2016) did not change. For the sake of brevity, this letter refers to those rights as they existed prior to the 2016 split.

In combination, water rights 22-2294 and 22-7057 authorize the diversion of 5.81 cfs and the irrigation of 831 acres (0.007 cfs/acre). Your letter states that the intent of Application 22-7648 is to increase the diversion rate at the proposed place of use to 0.02 cfs per acre. Currently, the place of use for Application 22-7648 and the place of use for water rights 22-2294 and 22-7057 do not match. Application 22-7648 only proposes 821 acres. The proposed place of use for Application 22-7648 only overlaps the 831-acre place of use for water rights 22-2294 and 22-7057 by 801.7 acres.

Riverside Farms may want to amend its proposed place of use to match the place of use for the existing water rights. I recognize, however, that filing an amendment may weaken your argument that the application must be considered as if it were still 1990. Also, increasing the proposed place of use to 831 acres would require re-publication. If Application 22-7648 is limited as you propose in your letter (to increase the diversion rate to 0.02 cfs/acre for existing irrigated acres), but the Application is not amended, the Application would be for 801.7 acres and 10.42 cfs (801.7 acres x 0.013 cfs/acre).

Injury to Existing Water Rights

Evapotranspiration (ET) data available to the Department strongly suggests that the additional rate per acre proposed in Application 22-7648 will result in additional consumptive use of ground water. METRIC data for July 2016 shows a mean ET for the proposed place of use of 223 mm (0.73 feet). This equates to a total ET of 585 acre-feet for the month of July (0.73 feet x 801.7 acres).

As you are aware, there was very little precipitation in Eastern Idaho in July 2016, meaning most, if not all, of the ET demand was supplied by ground water irrigation. If Riverside Farms were limited to its authorized diversion rate (5.81 cfs), it would only have been able to divert 358 acre-feet during the month of July (5.81 cfs x 31 days x 1.9835). Riverside Farms is clearly operating in excess of its existing water rights. The additional (unauthorized) rate diverted by Riverside Farms has resulted in additional consumptive use at the proposed place of use.

If the proposed permit were issued for 10.42 cfs, the permit would constitute 64% of the total authorized rate (10.42 cfs / 16.23 cfs) on the property. Assuming a consumptive use of 2.5 acre-feet per acre and assuming 64% of the total consumptive use occurs under the proposed permit, the expected consumptive use under the proposed permit would be 1,283 acre-feet (2.5 x 801.7 x 0.64). According to the Department's ESPA transfer tool, 1,283 acre-feet of additional consumptive use from ground water at the proposed point of diversion would result in significant depletions to certain reaches of the Snake River (Ashton to Rexburg, Heise to Shelley, Shelley to near Blackfoot, and near Blackfoot to Neely).

I am prepared to conduct the permit review for Application 22-7648. Please provide any additional evidence you would like me to consider on or before April 28, 2017. Based on the evidence you provide and the other evidence available to the Department at this time (taxlot records, diversion records, METRIC data, ESPA depletion analysis, etc.), I will determine whether to issue the permit or deny the application. Please feel free to notify me if you do not intend to provide additional evidence, thereby eliminating the need to wait for the April 28th response deadline to pass.

Sincerely,

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

James Cefalo