



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER - Governor
Gary Spackman - IDWR Director

December 20, 2016

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 (Riverside Farms)

Dear Rob:

Over the last year, you and I have spoken a couple of times about Application for Permit 22-7648. You wanted to know why the application was not approved by the Department in the early 1990s. On December 16, 2016, you sent a letter asking the Department to either approve Application 22-7648 or provide written explanation why Application 22-7648 cannot be approved. This letter is intended to provide an explanation why Application 22-7648 cannot be approved at this time. It is also intended to identify a path to bring Application 22-7648 to a final resolution.

I cannot say for certain why Application 22-7648 was not approved in the early 1990s, after the Department published notice. There are no letters or any other documents in the application file providing any clues why the application was held. Other applications in Basin 22, proposing irrigation from ground water, were approved throughout the 1990-1991 time period. In fact, there is no evidence in the application file that the Department ever completed its review of Application 22-7648 or even considered it approvable.

Your letter refers to an Amended Moratorium Order ("Moratorium") which was issued on April 20, 1993 and remains in effect today. However, the Moratorium does not encompass the property described in Application 22-7648. Therefore, there is technically no current restriction on processing Application 22-7648.

In the interest of administrative efficiency, the Department has not moved forward with applications for consumptive uses from ground water in the upper Snake River basin (trust water area and non-trust water area) because of injury concerns. An applicant proposing a consumptive use from the ESPA must demonstrate no reduction to existing water rights. Given our current understanding of the interaction between ground water and surface water rights in the ESPA, it would be very difficult for such an applicant to demonstrate no injury.

You have now requested that the Department complete its review of Application 22-7648 and make a final determination on the application. Two things need to happen before I can conduct a final review. First, because it has been 25 years since Application 22-7648 was originally advertised, I believe it is appropriate to republish notice of the application prior to completing the final application review. If the application is protested, we will move forward through the contested case process. If the application is not protested, we will move to the second item. I will designate a period of time for the applicant(s) to provide any additional evidence related to the review criteria in Idaho Code § 42-203A(5). Once the applicant(s) have provided any additional evidence relevant to the application, the Department will complete its review under Section 42-203A(5) and will determine whether the permit should be approved (with or without conditions) or denied.

Please provide any paperwork needed to update the ownership or contact information for the applicant. Once we have the right applicant identified, I will assign the application file to one of our agents to prepare the file for republication. Because the application describes a diversion rate greater than 10.00 cfs, it will be republished in newspapers throughout the state. We will keep you and the applicant updated as the application moves through the process.

Sincerely,

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

James Cefalo