



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

September 1, 2016

SALMON RIVER TOURS CO.
C/O MIKE MCLAIN
PO BOX 7
NORTH FORK ID 83466

RANDALL C. BUDGE
RACINE OLSON ATTORNEYS
PO BOX 1391
POCATELLO ID 83204

RE: Salmon River Tours Co. Permit No 77-14361

Dear Sirs:

I write this letter to address two issues related to permit 77-14361 in the name of Salmon River Tours Co. First, I would like to address Mr. Budge's May 16, 2016 letter regarding the controlling works requirement on that permit. Second, I want to make the permit holder aware that the US Forest Service has contacted the department and represented that, although you have submitted a statement of proof of beneficial use, you may not have fully complied with the conditions of the permit in that USFS authorization is not yet obtained. The department denies your request to waive the controlling works requirement and is willing to defer licensing for a time to allow you to obtain USFS authorization.

Mr. Budge's May 16, 2016 letter asks the department to waive the requirement for a lockable controlling works because the diversion is remote, seasonally used, and is not actively administered. Mr. Budge also states that a measuring device would be burdensome and would serve no useful purpose. I agree there is not a present need for a measuring device and I believe the permit reflects this with a condition similar to Mr. Budge's suggestion that they would install one if the need arises and upon request by the department. I decline to waive the requirement for a lockable controlling works because, despite the remote location and lack of oversight, the requirement need not be burdensome and Salmon River Tours Co must have the ability to adjust or stop the flow into the system, particularly if the use is seasonal. Further, Section 42-701, Idaho Code does not provide the Director discretion in requiring an adequate controlling works, but it does provide some discretion in determining what is adequate. A simple valve or the ability to lift the intake above the water and prevent it from falling back in would likely suffice.

The second topic I would like to bring to your attention is the attached email I received from Steven Spencer of the US Forest Service. Mr. Spencer states Salmon River Tours Co. has not yet received the necessary authorizations from the USFS. Mr. Spencer asks the department not to license permit 77-14361 until authorization is accomplished. Note that the department will void the permit and refuse a license if that authorization has not been obtained at the time of the licensing exam. The department is willing to defer conducting a field exam and issuing a license for up to five years so you have some time to obtain the necessary authorization. Unless we hear from you otherwise, the department will plan to schedule a field exam the spring of 2021.

If you have further questions on these matters, please feel free to contact me.

Sincerely,



Nick Miller
Manager, IDWR Western Region

enclosure: June 7, 2016 email from Steven Spencer, USFS RE: Permit 77-14361 (1 page)

cc:

Steven Spencer, USFS 1805 HWY 16, Rm 5, Emmett, ID 83617



Miller, Nick

From: Spencer, Steven M -FS [sspencer@fs.fed.us]
Sent: Tuesday, June 07, 2016 1:44 PM
To: Miller, Nick
Cc: Merriman, Danielle; Shinn, Jeffrey -FS; Holzinger, Joseph R -FS
Subject: Permit 77-14361

Nick,

I contacted Danielle Merriman by phone and email March 18, 2016 to express concerns about Application for Permit 77-14361. The permit was subsequently approved April 26, 2016 with condition Number 9 that:

Prior to diversion and use of water under this approval, the right holder shall obtain Forest Service authorization necessary to access the point of diversion or place of use or to convey water across federal land.

I see now that the Proof of Beneficial Use was filed May 5, 2016. You need to know that although the applicant and now permit holder may have contacted the Forest Service about this matter there is no authorization in place to allow this use of National Forest System (NFS) land.

There is substantial information in the email exchange with Danielle that it is very likely that the POD and part of the pipeline for 77-14361 is on National Forest System (NFS) land. It may be quite some time before a decision on the required authorization by the Forest Service is made. There is a major obstacle in this matter because it is on NFS land in the Frank Church River of No Return Wilderness.

Public Law 113-136 Wilderness Water Resource Protection Act of 2014 instructs the Secretary of Agriculture to issue a special use authorization to the owners of a water storage, transport, or diversion facility located on NFS land in the Frank Church-River of No Return Wilderness and the Selway-Bitterroot Wilderness for the continued operation, maintenance, and reconstruction of the facility if the Secretary determines that –

- (1) The facility was in existence on the date on which the land upon which the facility is located was designated as part of the National Wilderness Preservation System;
- (2) The facility has been in substantially continuous use to deliver water for the beneficial use on the owner's non-Federal land since the date of designation;
- (3) The owner of the facility holds a valid water right for use of the water on the owner's non-Federal land under Idaho State law, with a priority date that predates the date of designation; and
- (4) It is not practicable or feasible to relocate the facility to land outside of the wilderness and continue the beneficial use of water on the non-Federal land recognized under State law.

Unless these criteria are met the Forest Service cannot authorize the infrastructure for 77-14361 on NFS land pursuant to PL 113-136. Because Salmon River Tours does not have legal access legal access for to NFS land for the purpose of diverting and conveying water for this permit we request that, in accordance with Rule 45 of the Idaho Water Appropriation Rules, that this permit not be licensed until the access to and occupation of NFS land matter is resolved.

If you have any questions about this matter please contact me.

Thank you,

Steve