



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 5, 2015

JAMES P SPECK
SPECK & AANESTAD ATTORNEYS
PO BOX 987
KETCHUM ID 83340

Re: Water Right No. 37-7064E

Dear Mr. Speck:

This letter is a follow-up to the October 22, 2014 letter from Sandy Thiel of this Department and your letter dated October 23, 2014 regarding the water right referenced above. I understand you spoke with the Director about this water right and requested a retraction or clarification of the Department's October 22, 2014 letter.

Water right no. 37-7064E, a ground water right, was decreed by the SRBA court with conditions limiting its use in conjunction with surface water right no. 37-102B. The Department normally refers to the conditions as supplemental conditions. The supplemental ground water conditions limit use of the right to times when surface water is not available or is not sufficient to irrigate the common place of use. The intent of the conditions is to implement public policy to ensure continued use of surface water supplies and conserve ground water.

Water right no. 37-102B was disallowed in the SRBA due to a failure of the claimant or owner to appear to address an objection to the water right recommendation in the SRBA. The Department acknowledges that the disallowal renders the surface water right unavailable to irrigate the place of use.

The Department's supplemental conditions further limit the use of supplemental ground water in situations where the surface water is sold, transferred, leased or used on any other place of use. In 2007, the Department recognized that a water user desiring to use their supplemental ground water right as their primary source might try to justify the change by simply abandoning or forfeiting their surface water right. The supplemental conditions were changed at that time to add "abandonment" or "forfeiture" to the list of actions (or inactions) that would preclude the continued use of ground water without a transfer or other approval of the Department if the surface water right is somehow disconnected from the overlapping place of use. This action further confirms the intent of the supplemental conditions to maintain a usable surface water right at the place of use as a condition for use of the supplemental ground water.

The public's interest is best served by continued use of water right no. 37-7064E as a supplemental right in conjunction with a usable surface water right. However, the Department acknowledges that the supplemental conditions could be interpreted with a different outcome, especially if interpreted without consideration of the intent of the conditions. A better solution to provide more certainty for your client would be to move to have the partial decree of disallowal of water right no. 37-102B set aside and to seek to have the water right decreed as originally recommended. Because the water right was decreed as disallowed as a result of the claimants' failure to appear, the Court may be inclined to set aside the decree.

Please feel free to contact me if you want to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Peppersack', with a stylized, flowing script.

Jeff Peppersack
Chief, Water Allocation Bureau

cc: IDWR Southern Region