



State of Idaho

DEPARTMENT OF WATER RESOURCES

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GARY SPACKMAN
Director

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Governor

September 12, 2014

G ERIC POWELL
BROCKWAY ENGINEERING PLLC
2016 N WASHINGTON ST, STE 4
TWIN FALLS ID 83301

RE: Permit No. 71-10921

Notice of Pending Order to Void Permit

Dear Mr. Powell:

On September 4, 2014, IDWR's Southern Region office received a beneficial use field report that you submitted for the above permit. Your report has since been forwarded to the state office. I have been assigned to review it for acceptability and if appropriate, to process a new license for the uses that you confirmed. I have completed my review.

This letter has two purposes. It is intended to point out a serious problem with how this permit has been developed. It is also intended to respond to a recommendation you made to IDWR on a topic less critical to the preservation of this permit. The most important issue is discussed first.

Permit 71-10921 is paired with water right 71-10919 through the combined action of a permit and a transfer. Transfer 74715 created split 71-10919 which authorized irrigation, diversion to storage and aesthetic-recreation storage. Permit 71-10921 authorized aesthetic-recreation flow-through and aesthetic-recreation storage. In essence, water right 71-10919 authorizes the consumptive portion of the uses associated with these ponds while permit 71-10921 authorizes the non-consumptive portion. Both authorizations were required before Ketchum-Long Island, LLC. could develop a new, partially consumptive use in a moratorium area.

In your report, you state that a measuring device, which was required by a condition of the permit, had not been installed. You found that there was no measuring device on the water returning to the Salmon River from the Ketchum-Long Island, LLC. system. Permit condition 5 of Permit 71-10921 required that the recreation and aesthetic uses be non-consumptive. Permit condition 6 required measurement devices on both the diverted water and the returned water. This condition was intended to act as a mechanism for ensuring that the same quantity of water entering the pond system, also exits the system. As it is currently being measured, the exit flow cannot be confirmed to be equal to the entrance flow.

The permit holder has some options to resolve this problem. But it must be resolved before a license can be issued. Pursuant to Idaho Code § 42-219(6), if the conditions of approval on a permit are not complied with, IDWR may issue an order voiding the permit.

On a less crucial note, you made recommendations in your report which are not related to the measuring devices. You found that Ketchum-Long Island, LLC. has developed aesthetic-recreation ponds which are smaller than the combined permit and water right had authorized. And you recommended that the unused evaporation-irrigation use revert back to irrigation use. Because it has been less than 5 years since transfer 74715 was approved, IDWR will consider a request to convert the undeveloped evaporation-irrigation back to irrigation. However, that change request must come in the form of an application for transfer within the next 30 days. If Ketchum-Long Island, LLC. chooses to submit an application for transfer, please request that they submit it to me, at the address in this letter's heading, rather than to the Southern Region office.

In summary, your field exam report presents IDWR with two issues for follow-up.

- 1) A license cannot be issued without resolving the measuring device requirement.
- 2) Ketchum-Long Island, LLC wishes to convert some of the undeveloped use to a different use.

Both issues should be addressed within the same 30-day timeframe.

Therefore, IDWR will withhold further action on permit 71-10921 for 30 days from the date of this letter in order to allow time to respond.

If IDWR does not receive a response addressing the measuring device requirement within 30 days, it will be assumed that Ketchum-Long Island, LLC. is not interested in pursuing a water right license for the project, and action will be taken to void the permit.

If the measuring device issue is resolved but an application for transfer is not received 30 days, then a license will be issued for a rate and a volume which are not in agreement with your recommendations.

Don't hesitate to contact me to discuss the options.

Respectfully,



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CC: KETCHUM-LONG ISLAND LLC
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