



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

June 19, 2014

JEFF WENDLAND
3378 N 3300 E
KIMBERLY ID 83341

RE: Response to Correspondence Received June 18, 2014

Dear Mr. Wedland:

On June 18, 2014, our office received correspondence from you concerning water right license 47-7485. This correspondence consisted of a letter written by me on April 25, 2014 with a hand written note on the bottom of the letter and a map with hand written marks showing the point of diversion for water right 47-7485. The hand written note at the bottom of this letter stated that the point of diversion had been moved and that purpose of the permit was for power generation.

My June 18, 2014 letter asked for the information you submitted to be submitted within 14 days or by May 9, 2014. I tried numerous times to contact you by telephone, using telephone number (208) 733-3929, but each time, I received a message that the telephone was in service and to try again later. I have never been able to get through to this telephone number.

Where I did not receive your correspondence by the required date, I made a recommendation for licensing of this water right, which was licensed on **May 27, 2014** for aesthetic and aesthetic storage for a pond located in the NWNW quarter of Section 7 in Township 11 South, Range 18 East. The point of diversion was located in Government Lot 1 (NWNW quarter) of Section 7 in Township 11 South, Range 18 East. **The point of diversion listed on the license matches very closely to the point you marked on the map in your June 18, 2014 correspondence, so the point of diversion does not need changed on the license.** A copy of the water right license was mailed to you on **May 27, 2014**.

Once the license was issued, there is a very time sensitive timeline that must be followed to make any changes to the water right. Please read this entire letter very carefully, to ensure that you can meet the necessary timelines required. You must meet the deadlines described in this letter to make any changes to the license that was issued.

The license was based on diversion rates and volumes calculated from two field examinations, one performed on November 15, 1989 and the second performed on March 5, 1998. This pond is located in Rock Creek Canyon next to Rock Creek. The diversion rate was measured at 0.16 cfs and the storage was calculated at 0.7 acre feet. The field examiner in 1989 stated that no power use had been developed. The field examiner in 1998 submitted the following:

“Mr. Wendland says the power never was established. The ditch for hydropower has been filled in. The use of the pond is for aesthetic only as the fish have all been eaten.”

Based on the statement above, the license was issued for aesthetic purposes only. In order to include the hydropower or power generation on this license, you needed to provide proof that the hydropower was developed and in use prior to the date proof of beneficial use was filed or September 23, 1988. **If the hydropower was developed prior to September 23, 1988, then you have to follow the steps below to have it placed back on to your license.**

The letter that was sent to you with the license gave instructions stating that you had 14 days or until **June 10, 2014** to file an exception or petition for reconsideration. This 14 day limitation comes from Idaho Administrative Code (IDAPA) adopted in accordance with the Idaho Administrative Procedure Act. The IDAPA Rules of Procedure 37.01.01.730.02.a states that a party may file a petition for reconsideration 14 days after a preliminary order is issued. A license is issued as a preliminary order, so you have 14 days to petition of reconsideration before the license becomes final. **Unfortunately, you have missed the timeline allowed to file a petition for reconsideration, and license became a final order on June 10, 2014.**

IDAPA rules 37.01.01.730.02.g and 37.01.01.730.02.f do allow you an additional **28 days or until July 8, 2014** to file petition to appeal the final order with the District Court. IDAPA rules 37.01.01.760 does allow the Director of the Department to modify the license or order before the final date of appeal or in your case **July 8, 2014**. **In order for the Director to modify this license, you must supply the following information:**

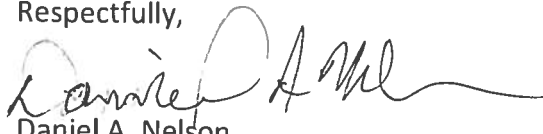
- We will need a working telephone number that we can contact you for information if needed.
- Information showing how much water was diverted for power.
- Type, model, and all information describing the power plant including how much water was needed to produce how much power, and any unit spec sheets or design manuals.
- We will need records showing the amount of power produced, and where that power was used. This must include any agreements for selling the power.
- We need any Federal Energy Regulation Committee or Public Utility Commission project numbers and/or approvals.

We will need this information as soon as possible before **July 8, 2013** to ensure that we will have the time to alter the license if necessary. I would try to get the information to us by no later than **July 1, 2014** if possible. If you wish, you can call me at (208) 287-4856 to schedule a time that we can come down and re-visit the site and attain the information from you. We want to make sure that this water right is licensed correctly, so we are willing to work with you to ensure it is correct.

If the power generation was developed after filing of proof of beneficial use for this water right or after **September 23, 1988**, then you will not be able to include it on this water right. Power generation is considered a non-consumptive use, and you can file a new permit for that use if needed. I have included an application for permit form and instructions with this letter in case you need to file a permit for the power generation developed.

I apologize for the length of this letter, but all of the dates are important. I feel it is also important that you understand what needs to be done and by what time you need to submit any information you may have. If you have any questions, please call me at (208) 287-4856 or email me at dan.nelson@idwr.idaho.gov. If you do call me, please make sure you leave a call back number where I can leave a message or get through to you directly. I have called telephone number (208) 733-3929 dozens of times, and it will not let me through, so I will need another number that I can contact you with.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel A. Nelson", with a long, sweeping horizontal line extending to the right.

Daniel A. Nelson

Staff Hydrologist

Telephone # (208) 287-4867

Fax (208) 287-6700 (attn: Dan Nelson)

Email dan.nelson@idwr.idaho.gov

Enclosure: Application for Permit Form and Instructions