

JUN 12 2014

Department of Water Resources
Eastern Region

To: James Cefalo, Idaho Water Resources

From: Stephen D. Werk

Date: June 10, 2014

Subject: Conditions for approval Water Right #15-7367

In reference to the Water Right #15-7367, consider this memo a formal request to "revise and correct" the conditions for approval for the above Water Right. The withdrawal of our protest against Water Right 15-7367 was clearly subject to definite conditions being added to the "conditions for approval" which your office did not do. All parties spent considerable time, effort and money to arrive at a solution that all parties could agree with at the June 4, 2014 meeting.

The "conditions for approval" were discussed, carefully designed and finalized by all parties present. There was an absolute agreement at the end of the meeting as to what those conditions were and that they would be added to the conditions for approval, and you, as the State Water Board Representative, said you had no, nor the State had, any objections to those conditions. Those conditions are as follows:

1. The Water Right was conditional in that it was to state "supplemental to Deep Creek water" and was to be classified as supplemental.
2. The Water Right could not be utilized as long as there was Deep Creek water available. Deep Creek water had to be used in total for the year before this Water Right is used, or it is forfeited. No exception to the above was to be granted or listed. If the well was pumped before Deep Creek was fully utilized each year, the Water Right was forfeited.
3. If the 160 AF/year was exceeded in any year, the Water Right was forfeited, no exceptions were mentioned or granted.
4. This Water Right 15-7367 was conditional in that it is a supplemental right to Deep Creek and is forfeited if for any reason Deep Creek water is removed or used elsewhere other than the listed 260 acres. There are no exceptions to this condition.
5. This right, when combined with all other water rights (Deep Creek and any other right on this 260 acres) was not to exceed 2.4 AFA per acre. This was negotiated with Brian Higgs, (my representative), the Alders

and yourself. The above was discussed at length with all parties agreeing to the 2.4 AFA per acre and the annual amount of 160 AF at the June 4, 2014 meeting. You were asked point blank if this was agreeable to you and the State, and you said "yes". In our phone conversation on June 10th you said the standard you placed in the condition of approval of 3.5 AFA is the standard used in the Malad Valley at this time. This condition of approval is irrelevant as it was not part of the agreement of 2.4 AFA as stated at the meeting.

6. The only acceptable device to measure the total amount of water pumped each year, was an actual water meter. No other means to measure the amount of water was acceptable by any of the other parties. This was a real sticking point in our discussions. It was agreed that a meter was to be in place before the pump is turned on in 2015. The meter was to be read twice per year. All parties and you agreed to this condition. At the meeting there was no mention of staffing problems to read this meter as you indicated in our phone conversation on June 10th, 2014. I would think that if there are staffing problems in your office you would not grant any additional water rights, as you cannot properly monitor them as required by State Law. It was also agreed if the meter showed more than 160 AF per year in any year, the Water Right is forfeited. No exceptions were mentioned or granted.

It is totally unacceptable that the time, effort and money all parties spent to arrive at an agreement can be unilaterally changed by your office without the consent of the parties involved. The above conditions were the ones, and the only ones, agreed to. Our withdrawal of our protest was subject to the "conditions of approval" listed at the meeting and on our written protest withdrawal sheet provided by you. The above conditions are the only ones agreed upon and acceptable to us.

Our protest withdrawal is formally rescinded until the "conditions for approval" clearly state our requirements as agreed upon by you as the representative of the Idaho State Water Resources Board, and all parties present at the June 4, 2014 meeting.

We would prefer to handle this at your office level, but if this cannot be resolved, we will take it to the State Office and other governing officials to

resolve this misunderstanding. I have spoken to Arthur Martinez, Sarah Warren and Bryan Higgs and they are in agreement to the conditions outlined in this memo, and support rescinding the protest withdrawal until this matter is resolved.

Signed on behalf of

Sarah and Matthew Warren
Arthur and Lorrie Martinez
Bryan Higgs

 
Stephen D. Werk Date

Cc:
Jeff Alder
Sarah and Matthew Warren
Arthrur and Lorrie Martinez
Bryan Higgs