

MEMORANDUM

Date: February 27, 2014

To: Water Right Permit File 63-32063

From: Jeff Peppersack 

Re: Meeting with Dave Shaw Regarding Permit Condition Compliance

I met with Dave Shaw, consultant representing the permit holder, to discuss compliance with permit condition before a license can be issued. In Dave's letter dated February 20, 2014, he suggested withdrawing proof and pursuing an extension to secure time to comply with conditions of the permit. I told Dave that I didn't think withdrawing proof of beneficial use to pursue an extension was appropriate or necessary at this time. The Department will likely issue an order to show cause why the permit should not be cancelled (see Idaho Code § 42-311). The intent of the order would be to solicit a plan to bring the diversion and use of water into compliance with the permit conditions.

The first item to be addressed is the diversion rate. The pump used for the permit is also used for another irrigation right and the flow rate cannot be controlled to limit diversion to the permitted amount of 0.05 cfs at times when the irrigation right is off. Dave said they would likely install a separate smaller pump in the well to limit the flow. Other conditions of the permit that need to be addressed are shown below with reference to the condition numbers on the permit.

Condition 6 limits the seepage rate from the ponds to 5.3 af/year. Seepage tests conducted to confirm seepage losses showed higher losses. Dave's February 20, 2014 letter suggests limiting the time period for losses to 170 days instead of year-round since water is only diverted under the permit during the non-irrigation season (the same pump diverts irrigation water to the ponds during the irrigation season). The permit authorizes year-round use of ground water for storage of water in the pond and to maintain the level to offset seepage and evaporation losses. Limiting the time period to consider losses would be inconsistent with the permit.

Dave and I agreed that the losses seemed high for a lined pond and Dave suggested losses might be occurring at some of the headgates or pipes to and from the ponds – no attempt was made during the seepage test to measure or account for those losses. The strict limitation on seepage was due to concerns from water users downstream of the ponds who might suffer losses as their water flows through the ponds. The permit holder has redirected those flows away from the pond to ensure losses to downstream users will not occur. Nonetheless, the restriction on the permit remains. Dave and I agreed another seepage test that will somehow account for piping losses could confirm actual seepage losses in the pond are within limits.

Condition 7 requires a totalizing measuring device and submittal of diversion amounts to the Department. Measurement must continue after proof is submitted with retention of records to be made available to the Department on request. Dave submitted available measurement data in his February 20, 2014 letter. In order to comply with conditions, better measurement and records will need to be maintained. Existing records show a total of 41.7 acre-feet diverted between 2008 and 2014; however, rentals for use from the well totaling 71.0 acre-feet exceeded diversions during the same time period. It is unclear to what extent, if any, the diversions from the well under the permit were out of compliance, suggesting the need for better reporting.

Condition 8 requires coordination with officials from the Wolf Lateral to ensure flows from the pond during the non-irrigation season do not interrupt maintenance of the lateral. Dave said the permit holder has coordinated with officials to ensure maintenance can occur.

Condition 9 requires mitigation for the depletion associated with the permit. I clarified that mitigation is only required for the evaporative component. The permit holder will seek mitigation water to offset evaporation as required under the permit.