



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER - Governor
Gary Spackman - IDWR Director

December 2, 2013

Jay Winfield
District Ranger
Salmon-Challis National Forest
311 McPherson Street
Salmon, ID 83467

RE: Request for Forfeiture of Water Rights 75-14072 and 75-14073

Dear Mr. Winfield:

The Department of Water Resources has received your letter requesting that water rights 75-14072 and 75-14073 be declared forfeited. Thank you for taking an active role in monitoring water use within the national forest boundary. This letter is meant to provide a summary of the forfeiture provisions of Idaho law.

Idaho Code § 42-222 states that a water right "shall be lost and forfeited by a failure for the term of five (5) years to apply it to the beneficial use for which it was appropriated." The Department of Water Resources has the jurisdiction to determine forfeiture. However, forfeiture of water rights is not favored and must be supported by clear and convincing evidence. (Jenkins v. IDWR, 103 Idaho 384 (1982)).

Idaho Code § 42-223 sets forth specific defenses to forfeiture. Two of the defenses may apply to the water rights in question:

42-223(6): No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from circumstances over which the water right owner has no control. Whether the water right owner has control over nonuse of water shall be determined on a case-by-case basis.

42-223(11): No portion of any water right with a beneficial use related to mining, mineral processing or milling shall be lost or forfeited for nonuse, so long as the nonuse results from a closure, suspension or reduced production of the mine, processing facility or mill due in whole or in part to mineral prices, if the mining property has a valuable mineral, as defined in section 47-1205, Idaho Code, and the water right owner has maintained the property and mineral rights for potential future mineral production.

You assert that water has not been used on the property since prior to 2006. Your letter included a number of attachments, which document field inspections conducted by the Forest Service between 2002 and 2013. The reports suggest that very little mining activity has taken place at the site since 2006.

At this point the Department does not have enough evidence to support an order of forfeiture for water rights 75-14072 and 75-14073. It is possible that the non-use of water at the site is due to circumstances over which the water right owner has no control, such as processing delays by federal or state agencies. It is also unclear whether any of the factors listed in Section 42-223(11) apply to the Blue Moon / Paradise / Rabbit placer claims. The Department does not have enough information to determine whether the reduced activity at the site is a result of fluctuations of mineral prices.

If you are able to provide additional information regarding the non-use of the water rights (confirming that the Forest Service has not, through its rules and regulations, prevented the water right owner from diverting water for mining purposes), the Department may consider issuing a show cause order. The order would require the current water right owners to show cause why the rights should not be considered forfeited. Please feel free to contact me if you would like to discuss this matter in greater detail.

Sincerely,

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

James Cefalo
Water Resources Program Manager
(208) 525-7161

Cc: All current owners of water rights 75-14072 and 75-14073