



United States
Department of
Agriculture

Forest
Service

Sawtooth National Forest
Ketchum Ranger District

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208-622-5371
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File Code: 2700

Date: July 10, 2013

James P. Speck
Attorney
SPECK & AANESTAD, P.A. PROFESSIONAL
CORPORATION
P.O. Box 987
Ketchum, ID 83342

RECEIVED

JUL 11 2013

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Dear Jim:

First of all, I want to apologize for not getting back to you with a response to your request in March of 2013, on behalf of the Lake Creek Meadows Homeowners Association, Inc., (LCM HOA) regarding the existing special use permit for a water diversion and pipeline on Lake Creek. You have contacted us about filing an application with the Idaho Department of Water Resources to increase the annual diversion volume for two existing water rights from 180.0 acre feet to 742.0 acre feet. The need for this increase is because the total combined annual diversion volume for water rights 37-02418 and 37-22663 is limited to 180.0 acre feet while the amount of water apparently needed to keep the ponds on your client's private land full, and meet other current needs, has been determined to be 742.0 acre feet. No increases in the rate of diversion are contemplated; however, the duration of the diversion would exceed the acre feet per year limitation of the existing decrees.

Water rights 37-02418 and 37-22663 were decreed March 2, 2012, by the Snake River Basin Adjudication Court to the Lake Creek Meadow Homeowners Association, Inc. They have the same point of diversion which is located on National Forest System (NFS) land. Water is diverted from Lake Creek and piped approximately two miles downstream to association member's private land. The pipe is equipped with an in-line flow meter.

Water right 37-02418 is for 0.27cfs from 1/1 – 12/31 for aesthetic purposes at six ponds with a total capacity of approximately 19.4 acre feet. The priority date is 10/16/1923. Water right 37-22663 is for 1.10 cfs from 5/1 – 10/31 for irrigation with a priority date of 5/1/1892. Both water rights include the conditions that their total combined annual diversion volume is limited to 180.0 cfs.

The LCM HOA's proposal is to increase the amount of water diverted each year from the NFS land by 562 acre feet. This increase would constitute a new use of water – an increase of 312% over the existing decreed water rights. Forest Service policy for establishing a new use of NFS land and resources is guided by Forest Service Manual (FSM) 2700 and many laws and regulations beginning with 36 CFR 251.

You need to be aware that Forest Service policy includes specific direction to deny proposals for use of NFS land which can be reasonably accommodated on non-NFS lands, and to not authorize the use just because it affords the applicant a lower cost and less restrictive location when compared with non-NFS lands. You will have to provide evidence and documentation to the



Forest Service including estimated costs of development and efforts to secure water from non-NFS lands by other means such as drilling a well that does not encumber NFS land. This is an important matter to the United States because a new water right with its associated resource impacts constitutes an encumbrance on the land and an irretrievable commitment of land and resources. It is for this reason that the information you provide must lead to the conclusion that there is no other reasonable source of water available. If other reasonable sources are not diligently sought, authorization through your client's special use permit must be denied.

Your proposal is subject to two levels of screening criteria and applicable laws and regulations such as Forest Service cost recovery, the Endangered Species Act, the Historic Preservation Act, the National Environmental Policy Act, and the Federal land Policy and Management Act of 1976. The Sawtooth National Forest Plan, amended June 2012, also has specific area and resource guidance pertaining to Lake Creek that will need to be considered. It could be some time before a final decision is made.

If you intend to proceed with your application for a new water right to the Idaho Department of Water Resources (IDWR) for an additional annual water diversion of 562 acre feet, you will also need to file for a new use of water to be diverted from the point of diversion on NFS lands using the existing pipeline and diversion. Please keep us informed of your client's decision.

If you have any questions about this matter please contact me at (208) 622-5371.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kurt J. Nelson', with a long horizontal flourish extending to the right.

KURT J. NELSON
Ketchum District Ranger

Cc: Allen Merritt, IDWR