



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C.L. "BUTCH" OTTER

Governor

GARY SPACKMAN

Director

January 31, 2013

WAYNE HURST
SHERRIE HURST
273 SOUTH 750 EAST
BURLEY ID 83318

RE: Request for a Hearing in the Matter of Water Right No. 45-7385

Dear Mr. and Mrs. Hurst:

The Idaho Department of Water Resource (IDWR) received your written petition requesting a hearing in connection with the *Final Order Adding Clarifying Language to Assist the Department in Administration of Water Rights Entitled to Qualified Subordination (Appendix B List)* (final order), issued on December 14, 2012. IDWR has reviewed your petition as well as the water right file for water right no. 45-7385. In an effort to provide you with specific information related to this water right, IDWR is providing an initial response to the statements made in your letter. The hope is that you will be in a better position to see if you can find additional development information related to this water right.

In your request for a hearing, you argue that a substantial investment and development of water right no. 45-7385 had both occurred prior to October of 1984. Specific information was not provided in your argument but, the following bolded items outline IDWR's findings:

Development of the Water Right Prior to October 25, 1984

Within the water right file of water right no. 45-7385 IDWR discovered two documents confirming that water was not put to beneficial use until after October 25, 1984. The two pieces of evidence include a Request for Extension of Time that was received by IDWR on August 16, 1984 and a Trust Water Questionnaire that was received by IDWR on June 9, 1989.

Substantial Investment of \$15,000 or 25% of the Total Cost of Developing the Water Right was made prior to October 25, 1984

Based upon IDWR's review of its files, IDWR cannot find evidence that the former owner made a substantial investment in the development of water right no. 45-7385 prior to October of 1984. It appears that water right no. 45-2731 shares a point of diversion and a place of use with water right no. 45-7385. Please keep in mind that any expenses to develop water right no. 45-2731 cannot count towards development costs for water right no. 45-7385. In other words, expenses in connection with the well that was drilled in 1966 and the development of 64 acres that are authorized in connection with water right no. 45-2731 cannot count towards development costs under water right no. 45-7385.

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Water Right No. 45-7385

In order for water right no. 45-7385 to benefit from unqualified subordination of the hydropower water rights of the Swan Falls Settlement, you will need to show beneficial use or substantial investment in development of the water right prior to October 25, 1984. A substantial investment is described as the expenditure of \$15,000 or 25% of the total projected cost of developing the water right. To date, existing evidence available to IDWR does not indicate that 45-7385 has met the criteria to benefit from unqualified subordination.

Copies of some of the key documents from IDWR's review are enclosed. If you would like to review the rest of the file for water right no. 45-7385, scanned images are available online at <http://www.idwr.idaho.gov/apps/ExtSearch/RelatedDocs.asp?Basin=45&Sequence=7385&SplitSuffix=>. The paper file can be viewed at IDWR's state office, 322 E. Front Street, Boise, during regular business hours.

If you do not feel that you can provide the required evidence as outlined in this letter, you may withdraw your request for a hearing. If that is the case, you may submit a simple letter explaining your withdrawal. Otherwise, the next step is to schedule a hearing. Please mark on the enclosed calendar on which days you WILL be available to appear in a hearing. The hearing will be held in Boise and Jeff Peppersack will be the hearing officer.

Please respond to this letter within 30 days. If the Department does not receive a response from you within 30 days IDWR will assume that you are no longer interested in pursuing a hearing and IDWR will issue a notice of proposed default pursuant to IDWR Procedure Rule 700.

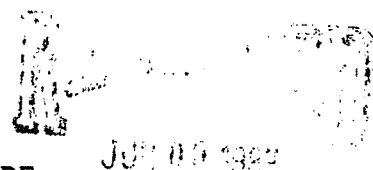
If you have any questions regarding this matter you may contact me at (208) 287-4944.

Sincerely,

Cherie Palmer, Sr. Water Resource Agent
Water Allocation Bureau

Enclosures

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRUST WATER INFORMATION QUESTIONNAIRE



Department of Water Resources

PERMIT NO. 45-7385

IF YOU ARE NOT INTERESTED IN HAVING YOUR PERMIT PROCESSED,
PLEASE COMPLETE AND RETURN THE ENCLOSED RELINQUISHMENT FORM.

INSTRUCTIONS: Please answer the following questions as
thoroughly as possible and submit the \$20.00 readvertisement
fee if applicable.

1. Did irrigation occur on the lands identified under your
permit prior to July 1, 1985? Yes No

If yes, you are requested to submit clear evidence that shows the
number and location of acres irrigated.

Aerial photographs taken prior to July 1, 1985, located in area
ASCS offices, are best forms of evidence. Photos submitted to the
the Department must be accompanied by a signed statement from an
ASCS representative which verifies the photo date and that the
lands were irrigated prior to July 1, 1985. If ASCS does not have
photos for the land and/or time in question, you must have the ASCS
provide the Department with a statement that photos are not avail-
able and then proceed to submit other forms of suitable evidence.

2. Please state the number of acres you have irrigated under this
permit since July 1, 1985. NONE

3. If you have not irrigated lands under this permit, please
state the number of acres you plan to complete. 190

NOTE: You must submit the \$20.00 readvertisement fee if any or
all of the lands were not irrigated before July 1, 1985.

4. If the permit is a supplemental filing please identify other
water rights which are used on the same land.

33230/33231 REF. EXPANSION CLAIM A45-10497

Use the reverse side of this form if you wish to add any comments.

I hereby assert that the responses provided above are true to the
best of my knowledge. I understand that any willful misrepresentations
may result in voiding of the application.

Permit Holder

James H. Kington

Date June 8, 1989

RECEIVED

OCT 13 1989

RECEIVED
AUG 16 1984

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

For Office Use Only
Fee Received 9/5/84
Date 8-17-84
Receipt # 35001

Department of Water Resources **REQUEST FOR EXTENSION OF TIME**

To provide additional time in which to submit
proof of beneficial use on a water right permit

M. Alvin Kempton of Star Route Box 27, Albion
(Name) (Address)

State of Idaho, deposes and says:

That he is the holder, or the duly authorized agent of the holder*, of Permit to Appropriate the Public Water of
the State of Idaho No. 45-7385

That under the terms and conditions of said permit, work thereunder was required to be completed on or before
October 1, 19 84

That he has heretofore performed the following work described under said permit: 100 acres cleared
(This must be filled out! If no work has been completed put none.)
of sagebrush and prepared for cultivation. Additional work has not
been initiated due to a question of users rights/ obligations called
into question as specified below.

Costing \$ 3,500

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:
Continuing litigation in the case of Idaho Power Company v. State of
Idaho, et al., Civil No. 62237, currently pending before the State as
an issue of State control of water development, rights of agricultural
water users, and Idaho Power water rights on the Snake River and associated
water plains/aquifers.

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations
under said permit to five (5) years after settlement of the "Swan Falls" issue.
(1 yr. minimum, 5 yrs. maximum) Specific date to be determined after
settlement of the issue due to provisions of Section 42-204 of the Idaho
Code which offer only one extension of "proof due date".

NOTE
AS OF JULY 1, 1980,
THERE IS A \$15.00
CHARGE FOR REQUESTS
FOR EXTENSION OF
TIME

M. Alvin Kempton
(Signature)
*IF OTHER THAN HOLDER, Power of Attorney must be supplied

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

IT IS HEREBY ORDERED that the above application for extension of time be APPROVED and the time within
which to submit the statement of beneficial use is extended to October 1, 1989. IT
IS FURTHER ORDERED that the permit be conditioned as follows: The department reserves
the jurisdiction of this permit for the purpose of adding any applicable conditions to
the protect the public interest.

Signed this 30th day of August, 19 84

J. Glen Saxton
Chief, Operations Bureau

MICROFILMED