



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 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

January 31, 2013

NORTHSIDE FARMS CO
C/O PHIL BLICK
PO BOX 635
BOISE ID 83321

Re: Water Right 36-7291A (Northside Farms Co.) - Request for Hearing

Dear Mr. Blick,

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. The Department has reviewed your petition as well as the water right file for water right no. 36-7291A. In an effort to provide you with specific information related to this water right, the Department 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 petition, you identified three reasons for disagreeing with the final order:

- You state that you were not informed of the opportunity to file an objection with the SRBA District Court.

Research Results: It appears you misinterpreted the Department's December 14, 2012 letter. The reference to the SRBA proceeding in the letter was intended as a factual statement, pointing out that you had not participated in the Snake River Basin Adjudication ("SRBA") proceeding related to the Swan Falls issues. The statement was not intended to suggest that you were foreclosed from presenting information to the Department related to when water right no. 36-7291A was put to beneficial use. In fact, the purpose of the Final Order was to provide you an opportunity to object to the inclusion of the condition if you could demonstrate that water right no. 36-7291A was put to beneficial use prior to October 25, 1984 or that the water right holder made a substantial investment in the development of the water right prior to October 25, 1984. Whether or not you received notice of the SRBA District Court proceeding does not matter for purposes of this proceeding. What matters is whether you have evidence showing that water right no. 36-7291A

was put to beneficial use prior to October 25, 1984 or that the water right holder made a substantial investment in the development of the water right prior to October 25, 1984.¹

- You state that the well was drilled in 1970. You attached a well log to your petition.

Research Results: The well log submitted identifies the well location as being in the NW¼NE¼, of Section 36, T8 South, R36 East, B.M. However, on May 12, 1978, a department field examination located the well and reported its location as being in the SW¼NW¼, of Section 36, T8 South, R36 East, B.M. Thus, it appears that this is a well log for a well associated with a different water right.

The well log you submitted lists the owners name as “Blick”, and indicates that the well was drilled in 1970. However, Northside Farms Co. did not take ownership of 36-7291A until 1978. Northside Farms Co. submitted a request for extension of time to submit proof of beneficial use on January 31, 1978, and the form indicated that a new well would be drilled in the spring. A copy of this form is provided with this letter.

A second request for extension of time to submit proof received on March 21, 1984, indicated that the well was complete, but that Idaho Power would not connect power to the pump due to the Swan Falls Lawsuit. A copy of the second request for extension is also provided with this letter.

Based on the above information, it does not appear that the well was drilled until sometime after March of 1978.

- You state that the pump was installed and water put to beneficial use in 1972-1973.

Research Results: On March 6, 1989, the Department received a trust water information questionnaire you submitted on behalf of Northside Farms Co. (enclosed). Item 2 on the questionnaire, you marked “No” to the question, “*Was the development or a portion of the development complete and water from the source identified under this permit used before July 1, 1985?*” Furthermore, the second request for extension of time to submit proof received on March 21, 1984 indicates that water was not put to beneficial use before March of 1984 because Idaho Power would not connect power to the pump due to the Swan Falls Lawsuit.

In order for water right no. 36-7291A 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 permit. To date, existing evidence available to IDWR does not indicate that 36-7291A has met the criteria to benefit from unqualified subordination.

1. Notwithstanding the above, it does appear that notice of the SRBA proceedings was mailed to you by the SRBA Court. The Certificate of Mailing for the SRBA proceeding does indicate that a copy of the SRBA District Court’s Order was sent to: NORTHSIDE FARMS CO., C/O PHIL BLICK, PO BOX 653, BOISE ID 83321. This, is listed on Page 10 of the Certificate of Service issued on April 27, 2011 in connection with the *Procedural Order Governing State of Idaho’s Second Amendment Motion to Include Subordination Language on Water Rights Affected by the Swan Falls Agreement*.

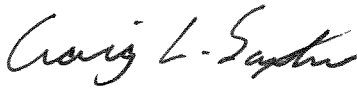
Copies of some of the key documents from the Department's review are enclosed. If you would like to review the rest of the file for water right no. 36-7291A, scanned images are available online at <http://www.idwr.idaho.gov/apps/ExtSearch/RelatedDocs.asp?Basin=36&Sequence=7291&SplitSuffix=>. The paper file can be viewed at the Department'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. In this 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 at Boise and Shelley Keen 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 the Department will assume that you are no longer interested in pursuing a hearing and the Department will issue a notice of proposed default pursuant to Department Procedure Rule 700.

If you have any questions regarding this matter you may contact me at (208) 287-4916.

Respectfully,

A handwritten signature in black ink, appearing to read "Craig L. Saxton". The signature is written in a cursive, flowing style.

Craig L. Saxton
Water Rights Supervisor

Enclosures

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR EXTENSION OF TIME

RECEIVED
JAN 31 1978

State of Idaho)
County of Gooding)

Department of Water Resources
Southern District Office
Permit No. 36-7291

North Side Farms Co. of Castelford, Ida
(name) (address)

State of Ida, being first duly sworn, upon his oath deposes and says:

That he is the holder, or the duly authorized agent of the holder *, of Permit to
Appropriate the Public Waters of the State of Idaho No. 36-7291.

That under the terms and conditions of said permit, work thereunder was required
to be completed on or before Feb 1, 19 78.

That he has heretofore performed the following work described under said permit:
Ground Has been developed, Irr. by PARTIAL OF
THE Ground belonging to part owner of the
Permit.

Costing \$ 25,000⁰⁰

That he is unable to complete the remainder of the work within the required time for
the following reasons, to-wit: New Well on our own property.
Has used Neighbours well for last years
Crop. will drill new well this Spring

Wherefore, he asks that the Department of Water Resources extend the time for the
completion of obligations under said permit to Feb 1, 19 79.

John Holuhant VP
for North Side Farms. (signature) *
Subscribed and sworn before me this 31 day of January, 19 78.

seal

Notary Public residing at
Idaho

My commission expires 2-22-81

ACTION OF THE DIRECTOR OF THE 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 proof of beneficial use of water is extended
to February 1, 1979.

Witness my hand this 13 day of February, 1978.

Betty D. Hearn
Chief, Operations Bureau

* IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available
through the Department of Water Resources, Statehouse, Boise, Idaho 83720.

Form 204
3/81

MAR 28 1984

For Office Use Only
Fee Received <u>15.00</u>
Date <u>3-23-84</u>
Receipt # <u>33856</u>

Department of Water Resources

STATE OF IDAHO
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

MAR 21 1984

Department of Water Resources
Southern District Office

Northside Farms Co. of Castleford, ID 83321
(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. 36-7291A

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

That he has heretofore performed the following work described under said permit:
(This must be filled out! If no work has been completed put none.)

Completed drilling of a well

Costing \$ 5000

That he is unable to complete the remainder of the work within the required time for the following reasons, to-wit:

Idaho Power Co. has refused to connect power
for pumping due to Swan Falls lawsuit

Wherefore, he asks that the Department of Water Resources extend the time for the completion of obligations
under said permit to February 1, 19 89.
(1 yr. minimum, 5 yrs. maximum)

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

North Side Farms, Inc. & Blisk, Inc.
(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 February 1, 1989.

IT IS FURTHER ORDERED that the permit be reinstated with an advance in priority to
March 13, 1973, pursuant to Section 42-218a, Idaho Code.

Signed this 23rd day of April, 19 84.

J. Glen Saxton
Chief, Operations Bureau

RECEIVED
MAR 06 1989

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
TRUST WATER INFORMATION QUESTIONNAIRE Department of Water Resources

GENERAL INSTRUCTIONS: Please answer all questions thoroughly.
A separate questionnaire must be completed for each permit.

1. Permit number 36-7291A.
2. Was the development or a portion of the development complete and water from the source identified under this permit used before July 1, 1985? Yes _____ No X

If yes, the Department requests that you submit evidence showing the extent of your development existing on July 1, 1985. Evidence should at least include aerial photos (for developments of five acres or more) which are signed and dated by a local ASCS representative. Other evidence may include power records, irrigation equipment records or receipts, and affidavits from persons who are knowledgeable of your operation and dates of past water use.

3. Are you still interested in developing or completing the development under your water right filing?
Yes X No _____
If no, please complete and return the attached relinquishment form.
If yes, please submit the required \$20.00 readvertisement fee.
4. If you answered yes to question #3, please indicate the number of acres you intend to develop. Approx 75 AC.

5. Remarks: _____

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 or cancellation of the permit by the department.

Northrup Farm by Phil Belal
Permit holder

3-2-89
Date

Address:
P.O. Box 635
Castleford, Idaho 83321

Phone (208) 537-6724
BUSINESS 537-6787

MicroFILMED

MAY 17 1989