



August 2, 2012

Idaho Department of Water Resources
Attn: James Cefalo
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

RE: *Amended Application for Permit No. 35-13542 in the Name of South Interchange Properties, LLC.*

Dear James:

Thank you for your time this past Thursday regarding discussion of the above referenced permit application that was filed on October 20, 2005. The application for permit was processed, advertised, and not protested. However, a permit has not yet been issued due to initial concerns with modeling from the proposal (see discussion below). We believe we have resolved those concerns with the changes outlined on the enclosed amendment. Because the application for permit is closer to an issued permit than an initial application, we have submitted our requested changes to the application for permit on IDWR's *Application for Amendment of a Permit*, along with its associated \$100.00 filing fee, even though 35-13542 is not yet a permit.

When we met this past Thursday, you asked a couple of good questions regarding the concerns of the Department. I have since had an opportunity to review our file and refresh my memory as to the concerns of the Department, and included documents for your review and consideration outlining those concerns, as well as the following explanation.

First, the original *Application for Permit* sought the ability to divert up to 140 acre feet per year for use in three facilities associated with the Melaleuca Campus located directly west of the south interchange in Idaho Falls. While it was initially proposed that only 7.4 acre feet of the 140 acre-feet proposed for diversion would be consumptive, a letter dated October 12, 2007 from Jeff Peppersack indicated that while there would be a small amount of consumptive use. ESPA modeling showed that there would be effects to reaches of the Snake River that are upstream of the Shelley to near Blackfoot reach because of pumping of the entire 140 acre-feet. As you know, the cities of Shelley and Ammon have recently constructed a regional waste water facility near Shelley. At the time Melaleuca constructed its existing distribution facility, it paid for the construction of a dedicated line from its property to the regional waste water facility. Reference to the facility is referenced in Mr. Peppersack's October 12, 2007 letter.

The letter indicates that for the Shelley to near Blackfoot and the near Blackfoot to Neeley reaches, injection of the treated water would mitigate for any impacts to the river based on the modeling. The concern of the Department was that pumping this volume would cause impacts exceeding two acre feet per trimester in the Heise to Shelley and Ashton to Rexburg reaches upstream. Because of that, the Department requested that we submit mitigation plans, which we did. Ultimately, we received the enclosed letter dated November 5, 2008, which included a memo from Mat Weaver to Jeff Pepepsack indicating that the mitigation plans were not adequate. While the history of the mitigation plans is not necessarily important for purposes of our amendment, I thought it would be helpful to provide you this information to demonstrate that the major concern of the Department was based on ESPA modeling and impacts over 2 acre-feet per trimester upstream of the proposed point of diversion. On the bottom of page three of Mr. Weaver's memo, he described that he modeled the new *Application for Permit* in an amount of 46.9 acre feet per trimester at cell 75:154.

The fortunate news is that the enclosed application to amend the permit proposes to reduce the amount sought from 140 acre-feet to 22 acre-feet. In addition, because the manufacturing facility originally planned for this area will not be constructed at the present time, we are requesting the removal of the industrial use from the *Application for Permit*.

You may be wondering how the amount originally sought of 140 acre feet could be reduced to 22 acre feet. In the attachment associated with the original permit application, there was a narrative statement regarding mitigation, which included a calculation of the amounts needed at these facilities. The narrative discussed three buildings, the distribution center, manufacturing plant, and the administration building, each of which proposed to use 9.6 acre feet per year, 73.6 acre feet per year, and 74.9 acre feet per year respectively. In the enclosed *Application for Amendment*, those amounts have been changed.

First, it is unclear why the original narrative included the distribution center. The distribution center is currently authorized to receive water pursuant to Permit No. 35-13537, which has been issued and proof of beneficial use already submitted. As noted in the conditions of this permit, the commercial use is for "restrooms and drinking fountains in a distribution center". The distribution center should not be included in our proposed amendment to Application for Permit No. 35-13542.

Additionally, the manufacturing plant and its associated 73.6 acre feet, along with its industrial beneficial use, is also being removed with the enclosed amendment.

Regarding the amounts in the original narrative, the calculation of commercial use was based on a rate of **30 gallons per day per employee** for 2,000 employees. Based on Melaleuca's own records, we have determined that this amount is high. Based on recorded diversion amounts at the so-called "powder facility" (discussed below), which only uses water in the facility for non-consumptive culinary and equipment washing purposes, the amount used is

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13 gallons per day per employee. The non-consumptive culinary amounts for the administration building and day care facility should be, based on our estimations, slightly less at **11 gallons per day per employee.**

Since the original Application for Permit was filed, Melaleuca has since constructed a powder facility where powdered drinks mixes are produced. We initially intended to subsequently include this building under permit No. 35-13537 (the one issued for the distribution center) when it was licensed, but we have now determined it would be better to simply include it under this amendment for 35-13542.

With this in mind, we have calculated a total diversion volume of 22 acre-feet (as described on Attachment 1) for water to be used at the powder facility, administration building, and day care facility.

With these amendments, and to be consistent with Mr. Weaver's memo and address the Department's original modeling concern, we have modeled the impacts to reaches of the Snake River based on an amount of 22 acre feet per year, or 7.34 acre-feet per trimester under the Department's enhanced eastern Snake Plain Aquifer Groundwater Transfer spreadsheet (Version 3.1), using the same cell number used by Mr. Weaver in his analysis. The model analysis is attached, and it demonstrates that the model impacts to reaches of the Snake River upstream from the Shelley to near Blackfoot reach are significantly less than the originally modeled amounts of 140 acre feet per year. With the amendment down to 22 acre feet per year, the amounts shown on the Heise to Shelley and Ashton to Rexburg reaches are each less than 1 acre foot per trimester. As such, pursuant to the Department's processing policies, we will not be required to mitigate for these upstream impacts. The downstream impacts will be mitigated for by discharges from the treatment facility.

With these amendments, it is our position that the enclosed application does not require any additional mitigation other than the discharge of treated non-consumptive water from the Shelley facility into the Snake River. Because the changes reduce the scope of the water right originally sought, we likewise believe that the amendment does not need to be advertised.

Should you have any questions or concerns regarding the enclosed, please do not hesitate to give us a call. We appreciate your attention to this matter.

Best regards,


For Robert L. Harris

HOLDEN KIDWELL HAHN & CRAPO, P.L.L.C.

Enclosures

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