

MEMORANDUM

Date: January 18, 2012

To: File 36-8242 – Wendell Cemetery District

From: Jeff Peppersack

Re: Phone Conversation with Paul Isaacson

I spoke with Paul Isaacson (208-536-6187) about the cemetery district's voided application no. 36-8242. The application was submitted in 1984 and held due to Swan Falls litigation. In 1990 the Department sought information about development to continue processing of the application. The applicant did not respond. On August 13, 1990, the Department issued a void order and notified the applicant that if they disagreed with the decision they must request a hearing within 15 days. The applicant submitted a letter to the Department on August 23, 1990 requesting a hearing and explaining that the well had been in use since 1984. The Department responded by letter on September 4, 1990, indicating that it would consider rescinding the void order and may approve the application if evidence is submitted confirming beneficial use of the well for irrigation in 1984. The applicant did not respond. On October 22, 1990 the Department sent a letter requesting the information again and reminding the applicant that the void order would remain in effect.

In my discussion with Paul Isaacson, I indicated that the Department should have scheduled a hearing to address the applicant's appeal of the void order. Since the appeal is still pending, a hearing should be held, or the applicant can submit the required information and the order can be withdrawn. Paul indicated that they would submit information confirming use in 1984.

Assuming sufficient documentation is submitted, the following steps need to be completed:

- 1) Withdraw the order voiding the application
- 2) Re-advertise the application pursuant to the Water Appropriation Rules for Swan Falls processing (even without the rule, the application should be re-advertised due to the late processing of a consumptive application in the moratorium area)
- 3) Address any protests and decide if the application can be approved as an exception in the moratorium area due to Department error/delay or some other reason
- 4) If approvable, determine if the permit is trust water or not based on development before or after October 1, 1984