



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

August 24, 2011

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

C/O THOMAS SMILEY
US DEPT OF INTERIOR
FISH & WILDLIFE SERVICE
911 NE 11TH AVE
PORTLAND OR 97232-4181

RE: Petition for Reconsideration for Permits 98-7771 and 98-7829

Dear Permit Holders:

The IDWR has received information and data in support of your petition for reconsideration that you filed on February 18, 2011. IDWR understand that you are requesting the following changes:

1. Modify condition #3 on permit 98-7771 and #5 on 98-7829 to:
Claim 98-4113 and rights 98-7366, 98-7771 and 98-7829 when combined shall not exceed a total diversion rate of 16.99 cfs. OR
Claim 98-4113 and rights 98-7366 and 98-7771 when combined shall not exceed a total diversion rate of 15.23 cfs.
2. Modify condition #5 on permit 98-7771 and #6 and #7 on 98-7829 to:
Wildlife storage is for wildlife use and wetland enhancement, including initial filling of wetlands and replacement of losses caused by evapotranspiration, seepage and evaporation.
3. And finally modify the maximum diversion volume allowed under 98-7829 from 850 afa to 1271 afa.

The IDWR has reviewed your submittal and has made the following conclusions:

Request #1 turns out to be a moot point. When the two rights were licensed, IDWR was under the impression that the two pumps on the system were operated independently of one another. In the petition, you clarify that the pumps are operated at the same time, thereby increasing the diversion rate at a given moment. In addition, when evaluating a combined limit between water rights, the diversion rate under a statutory claim does not go towards the final limit. A statutory claim is unconfirmed and therefore cannot be validated through a condition of approval. Consequently, if the diversion capacity of the two pumps is 16.99 cfs, a limit is not needed since the authorized diversion rates for 98-7366, 98-7771, and 98-7829 is 11.99 cfs which is less than the limit.

Request #2 is approvable and can be added into the conditions of approval with one change; the wildlife storage is for wildlife use and wetland habitat enhancement, etc.

In Request #3, a larger volume was requested to ensure that the place of use for 98-7829 has sufficient water, but information that illustrates that 850 af is not sufficient was not provided. IDWR made a crude calculation to estimate water needs at the place of use for 98-7829. The water required for the place of use for 98-7829 was estimated to be 1271 af annually based on the size of the place of use, seepage, and evaporation. **The volume available under overlapping water right 98-7366 was not accounted for in the volume calculation of 1271 af.** Right 98-7366 was licensed with a volume of 1657.9 af. In summary, there is not sufficient information that was submitted that shows that 98-7366 and 98-7829 require more than 2507.9 afa together.

The next step is to issue the water right licenses pursuant to the draft licenses that are enclosed for your review. If you disagree with our findings, please contact me at (208) 287-4944, otherwise IDWR will issue the licenses within 7 days of this letter.

Sincerely,



Cherie Padilla
Sr. Water Resource Agent
Water Allocation Bureau

Enclosures