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 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

Gary Spackman
Interim Director

July 21, 2011

MONTY & CAROLENE FUNK
PO BOX 360
AMERICAN FALLS ID 83211

Re: Trust Water Term Review for Water Right No. 35-13813

Dear Water Right Owner:

Water right records of the Idaho Department of Water Resources indicate that you are the owner, represent the owner, or have a security interest in a water right or permit based on an appropriation of "trust water" pursuant to Section 42-203C, Idaho Code (see http://www.legislature.idaho.gov/idstat/Title42/T42CH2SECT42-203C.htm). Trust water consists of flows of water in the Snake River and its surface and ground water tributaries between Swan Falls Dam and Milner Dam that are in excess of the minimum stream flows established at the Murphy U.S.G.S. gauging station on the Snake River near Swan Falls. The State of Idaho holds Snake River hydropower water rights exceeding the minimum flows "in trust" and these rights are subordinated to other uses, including your water right, pursuant to state law and subject to the conditions set forth in your water right.

Snake River flows at the Murphy gauge have diminished over time. Therefore it is necessary to determine whether continued use of trust water rights may jeopardize the established minimum flows in the future.

One of the conditions of approval of your water right provides that the right is subject to a term review to determine availability of water and to reevaluate the public interest. The term on your water right may have recently expired or will expire in the coming years. The purpose of this letter is to inform you that your right will be reevaluated to determine if trust water is available for diversion and if your continued use of trust water remains in the public interest pursuant to Section 42-203C, Idaho Code. [1]

The Department will contact you when review of your right is to begin. The Department does not anticipate beginning reevaluation until after the Snake River Basin Adjudication workload and other priorities are mostly completed. At that time, you will be asked to provide information expressing your intent to continue the beneficial use of trust water and other information providing details of the status of your water right.

[1] If you are the owner of a water right permit subject to a stay in development by order of the Department, or if your permit has not been developed for other reasons, this letter does not change the status of your permit and the term review described in this letter will still apply.

If you seek to continue diverting trust water under your right, you are not required to do anything at this time. The Department will include your right in a review of trust water availability and the public interest for future allocation of trust water. Depending on the Department's determination of water availability and to ensure that the minimum flows at the Murphy gauge are sustained, mitigation will likely be required to continue diverting water under your right. For example, mitigation might be accomplished through the assessment of a fee on trust water rights that would finance a state action such as storage acquisition to provide replacement water to sustain the minimum stream flows. Please note that this mitigation requirement may be in addition to any mitigation that you may already be providing for this right due to delivery calls associated with the East Snake River Plain Aquifer. You will have opportunity to request reconsideration and/or appeal the Department's decision as provided under Idaho law and rules of the Department.

If you do not wish to continue diverting trust water, you may formally abandon your water right and avoid the term review process and possible future mitigation requirements. A form is available to document an abandonment of a water right on the Department's website at www.idwr.idaho.gov.

If you have questions about the term review process, please contact one of the offices of the Department of Water Resources:

- State Office in Boise 208-287-4800
- Western Region Office in Boise 208-334-2190
- Southern Region Office in Twin Falls 208-736-3033
- Eastern Region Office in Idaho Falls 208-525-7161

Sincerely,

Jeff Peppersack, P.E.
Chief, Water Allocation Bureau