



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

January 5, 2011

BROCKWAY ENGINEERING P.L.L.C.
ATTN: CHARLES G BROCKWAY
2016 N WASHINGTON ST SUITE 4
TWIN FALLS ID 83301

Re: Proposed Mitigation Plan for Permit 37-8205

Dear Chuck:

The Department has received the Proposed Mitigation Plan for Pond Evaporation dated November 23, 2010 for the permit referenced above. The plan proposes to reduce the pond heat load and asserts a credit for reduction of consumptive use associated with the reduced surface area of the original Clarendon Reservoir.

When we discussed potential mitigation for this permit last August, I agreed that there may be some potential for mitigation due to the reduced surface area of the reservoir; however, I also expressed some concern that the protest agreement associated with the transfer to reconfigure the reservoir (Transfer 68545) may limit any potential credit. In addition, I cautioned that the right, as defined after the transfer approval, may be limited in a way that would make it difficult to identify a portion for mitigation.

I asked staff to review the proposed mitigation plan and the water rights associated with the reservoir. I have enclosed the results of that review with this letter.

Information in the water right file only confirms about 10 acres of surface area associated with Clarendon Reservoir in the late 1970's. During the 1980's, documentation in the water right files shows that the surface area was reduced to about 8 acres due to siltation problems. In the early 1990's, no storage was occurring in the reservoir.

An extension of time to avoid forfeiture was approved by the Department in 1994 with a resumption date set for November 1, 2000. In September, 2000 Brockway Engineering reported that new construction at the Clarendon Reservoir site was essentially completed and the facility was capable of storage. A total of five ponds were listed with a design surface area of 16.9 acres and total volume of 137 acre-feet. However, based on other information in the water right files, the extent of actual beneficial use completed by the resumption date appeared to be limited to three ponds with a surface area of 9.35 acres and total volume of 67.6 acre-feet.

The filing of transfer application 68545 raised questions of forfeiture or partial forfeiture for rights associated with the reservoir. A stipulated agreement between the applicant and protestants limited reconfiguration of the reservoir to a total of 13.13 acres of pond surface area and total volume of about 102 acre-feet. Acceptance of the agreement and approval of the transfer by the Department presumably acknowledged the applicant's authority to resume use up to that amount. The transfer was approved in 2003. Note that the transfer approval provided 3 years to accomplish the transfer.

The proposed mitigation plan documents the development of 11.8 acres of pond surface area by 2009. If the developed pond water use is less than the limit of the stipulated agreement as approved by Transfer 68545, I question whether there is any unused surface area, volume or consumptive use available for mitigation seven years after approval of the transfer. In other words, the portion of the reservoir rights proposed for mitigation was never resumed and therefore is not available for use as mitigation. To be acceptable, a proposal for replacement water from reductions in pond surface area would need to reduce the current pond surface area from 11.8 acres because that amount is the documented extent of resumption of use associated with the extension of time to avoid forfeiture approved in 1994 and the transfer approved in 2003.

The first part of the proposal to reduce the pond heat load would reduce the mitigation requirements for permit 37-8205, as well as the beneficial use for licensing purposes. Note that diversion of water to the pond under permit 37-8205 is not authorized until an acceptable mitigation plan is provided to replace the consumption of water due to increased evaporation from the pond.

I have instructed staff to complete processing of the pending application to amend permit 37-8205. Once the amendment is approved, the Department will hold further action to license the permit for one year to provide time for the permit holder to submit an acceptable mitigation plan. If acceptable mitigation is not provided, the Department will proceed to license the permit for only those developed uses that do not require mitigation.

Please feel free to contact me with any questions.

Sincerely,



Jeff Peppersack, Chief
Water Allocation Bureau

Enclosure

cc: EDWARD LAWSON
LAWSON LASKI CLARK & POGUE PLLC
SUN VALLEY LAND & MINERALS INC