



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

December 31, 2008

LAKEVIEW WATER DISTRICT
ATTN: LARRY ANNEN
PO BOX 2136
OROFINO, ID 83544

RE: Water Permits 83-7118, 83-7136, and 83-11931

Dear Mr. Annen,

This letter is in follow up to the conversations we had on July 8, 2008, during my site visit on behalf of the Idaho Department of Water Resources (the Department) to conduct field examinations for permits 83-7118, 83-7136, and 83-11931. These permits represent the collection of water rights currently under development by the Lakeview Water District, or variations of that entity, to provide municipal water to the Lakeview Subdivision. During my site visit you gave me a thorough tour and review of your system. Following my site visit there were a number of outstanding items on both of our parts that were needed before the permits could be perfected into water rights. This correspondence is an attempt to tie up the loose ends, so that we can proceed with the final step of issuing water right licenses for each of the permits in question.

Lakeview Water District Permits

The first item that needs to be addressed is the amendment of the existing permits to update in whole or in part their owner information, address information, point of diversion (POD) descriptions, place of use (POU) descriptions, and beneficial uses. I have attached a map (as requested) that depicts the Lakeview Water District (LWD) system and water right permit information as I currently understand it. Please review the map in reference when reviewing the following list of amendment items and if any mistakes exist on the map please bring them to my attention.

- Permit 83-11931 shall be amended to recognize the owner of the water right as the **Lakeview Water District**.
 - In order to change the owner of the water right I will need the LWD to fill out the attached "Assignment of Permit" form, which will transfer ownership of the permit from the Lakeview Recreational Water District to the Lakeview Water District, and return it to me with a payment of \$25 for processing.
- As needed the appropriate permits shall be amended so that the **current address** for the Lakeview Water District is **PO BOX 2136 OROFINO, ID 83544**.
- As needed the beneficial use for the appropriate permits shall be amended to "municipal". A municipal use can be thought of as an umbrella use that allows for a

variety of beneficial uses that fall under the purview of a municipality, including but not limited to domestic, storage, irrigation, and fire protection. A municipal use has the added advantage of not having an annual volume diversion limitation associated with it.

- As needed the permits shall be amended so that the POU is defined as being within the service area of the Lakeview Water District as provided for under Idaho Law. The POU will be generally described as T37N, R01E, Sections 23 and 24. The boundary of LWD's current service area is indicated on the attached map by a heavy pink line.
- As needed the description of the point(s) of diversion for the permits shall be amended to include all five wells (refer to attached map for locations).

I have prepared license amendments for each of the LWD's water rights in conformance with the above items. Please sign each license amendment form and return to me with a payment of \$25 per amendment for processing. In addition to a signed and completed Assignment of Permit and signed License Amendment forms, I will need the following information to complete the licensing of the permits.

- Number of homes served by the LWD as of August 9, 1998, May 23, 2002, and October 24, 2006.
- Historical data of diversion volumes and run times for two typical summer months and two typical winter months for the years of 1998, 2002, and 2006.
- Pump performance curves, or if a Grundfos pump the model number and specifications, for Well #4. Please include the depth in the well to which the pump is set and typical operation pressures of the pressure zones 1 and 2.
- GPS coordinates of each of the wells and reservoirs (helpful but not strictly necessary).

Ponds

During my site visit we also discussed pond features within the Lakeview Subdivision and whether or not they require water rights. You expressed some confusion on this issue and asked for guidance in association with this topic. In Idaho there is no statutory definition for a pond. The term is used by the Department in association with water rights to mean a natural source of water, a "small" reservoir of water, either on-stream or off-stream, or an excavation intercepting the water table and exposing ground water. Idaho Statute §42-201(2) states the following:

"No person shall use the public waters of the state of Idaho [including ground water] except in accordance with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists."

This statute is interpreted and generally accepted to indicate that a water right is needed to divert water to a pond for beneficial use in the pond or to divert water from a pond for a beneficial use outside of the pond. There are several circumstances that can alter the general statement that a water right is needed to store water in a constructed pond. They include the

following:

- Incidental Ponds – An excavation made for another purpose (e.g. gravel extraction) that fills naturally with water does not require a permit if the excavation will be filled in or otherwise obliterated within a reasonable time.
- Diffused Surface Water – A water right permit is not required to construct and use a pond with diffused surface water as its sole source. Diffused surface water is water on the surface of the land from precipitation and snowmelt prior to entering a natural watercourse.
- Regulation/Distribution Ponds – A water right permit is not required to construct and use a pond that is part of a system used to distribute and use water in accordance with a valid water right, if the pond does not impound a larger volume of water than authorized for diversion within a 24-hour time period (pond volume < diversion rate x 24 hours).
- Wastewater Pond – A water right permit is not required to construct and use a pond that is necessary to comply with water quality standards and treatment requirement for a beneficial use that already has a water right.
- Domestic Exempted Ponds – A water right permit is not required to construct and use a pond that meets the statutory requirement for exemption for domestic uses (Idaho Statute §42-111 and §42-227). If the pond is excavated and fills naturally with ground water or is constructed in any manner and is filled by pumping ground water, the total use of the pond and the other domestic uses exempted from permitting must not exceed 13,000 gallons (~20 ft x 20 ft x 4 ft) per day for uses under part (1)(a) of Section 42-111, or 0.04 cfs and 2,500 gallons (~10 ft x 10 ft x 3 ft) per day for uses under part (1)(b).
- Natural Ponds – Generally a water right permit is not needed and cannot be issued to protect, in place, the water of a natural pond. Natural ponds include those formed and existing under natural conditions and those that were created when natural basins filled with seepage or return flow from water lost by irrigation and other development projects.
- Retention of stormwater runoff.

Ponds that do not meet the above exemptions require a valid water right or water right permit for continued use. A water right can be obtained by filling out an application with the Department, or by filing a late statutory use claim with the Snake River Basin Adjudication.

Diversion of Water from Dworshak Reservoir

The final issue I would like to address in this letter pertains to our discussion on diverting surface water from Dworshak Reservoir to meet the future municipal water needs of the LWD. I have done a cursory review of the merits of this proposal.

The Dworshak dam and reservoir system was constructed for the primary purpose of hydroelectric power generation and a secondary purpose of flood control. The dam became operational for flood control in 1972. The dam and reservoir system is owned and operated by the United States Army Corps of Engineers (United States Department of Defense). Unlike reservoirs in southern Idaho such as American Falls, Palisades, and Anderson Ranch, the storage of water for appropriation to the public was not a goal or function of the reservoir. As such, there are no "storage water rights" available within the reservoir. In fact, there is not a single water right associated with the storage of water in Dworshak Reservoir.

This being said, the Dworshak Reservoir is filled by and resides within the natural drainage of the North Fork of the Clearwater (NFCW) River. The NFCW River drainage is currently open for appropriation and the LWD could apply for a new municipal surface water right that lists the NFCW River as the source. Precedence has already been set with existing water rights 83-7017, 83-7028, and 83-7029, all of which list the NFCW River as the source of their domestic water right, appear to divert water from Dworshak Reservoir, and were established after the completion of the dam. It should be noted that these water rights are all in the name of the United States Department of Defense. If the LWD were to submit an application for municipal use listing the NFCW River as the source of surface water, the Department would accept and process the application. In doing so we would need evidence that you were currently taking all the necessary steps to obtain rights of ways, encroachment agreements, and permission from the respective Federal and State agencies with jurisdiction over Dworshak Reservoir and the surrounding lands.

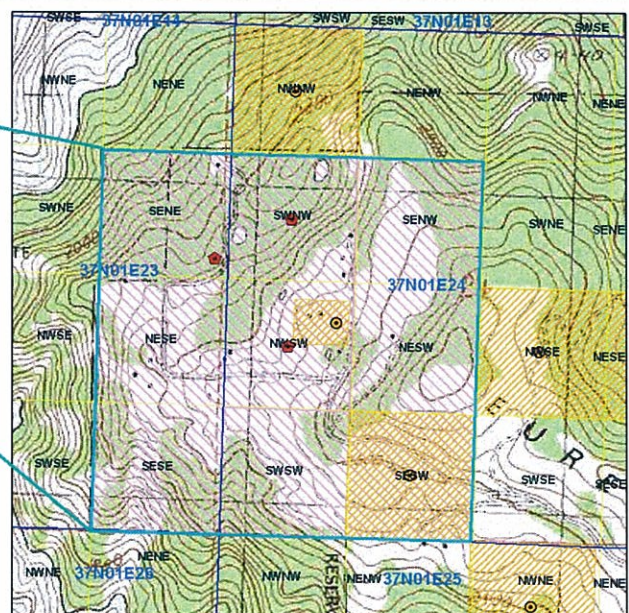
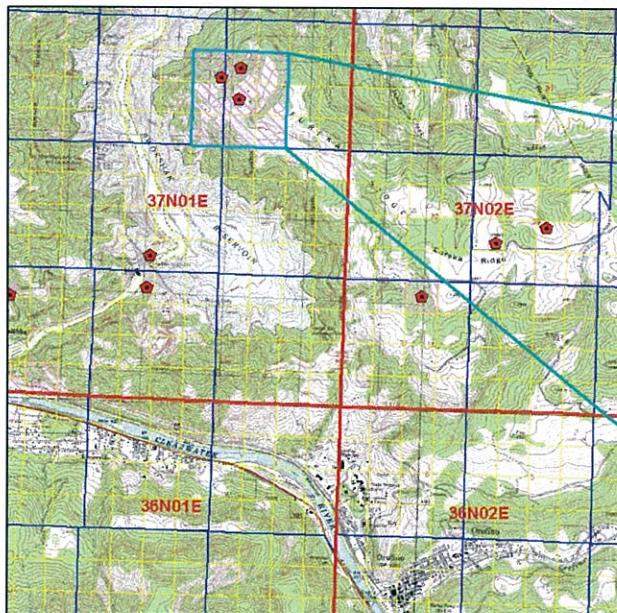
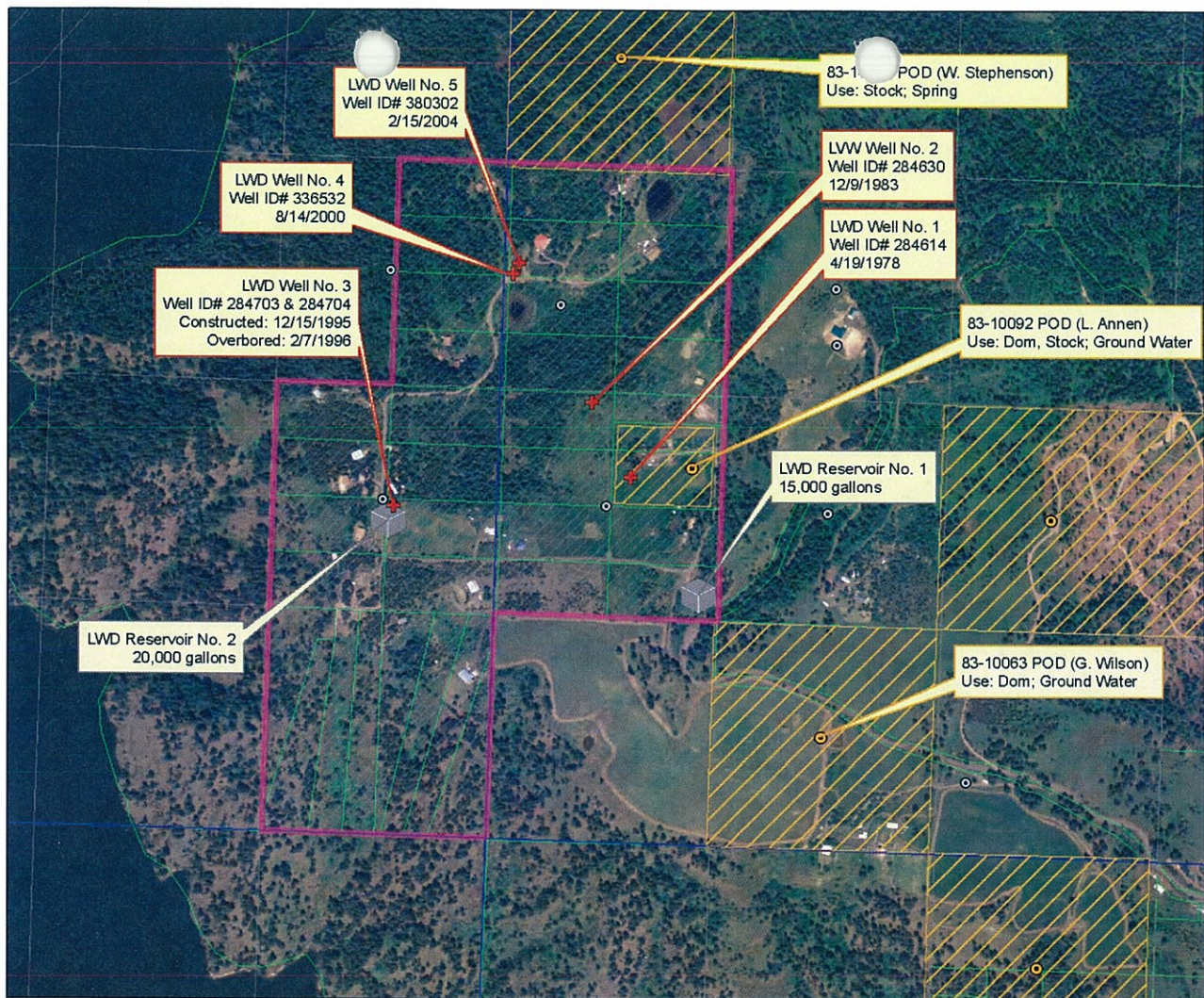
I hope that this letter has addressed all of the outstanding items that existed following my site visit and field examination. Once I receive all of the pertinent information and documents from the LWD I will proceed with finalizing the water right permits under consideration. If you have any questions regarding these matters please contact me by email at mathew.weaver@idwr.idaho.gov or by telephone at (208) 287-4914.

Respectfully,



Mathew Weaver, PE
Staff Engineer

Enclosures



Legend

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|------------------------------------|------------------|----------------|
| LWD Service Area | Active Right POD | Township/Range |
| Lakeview Water District Reservoirs | Active Right POU | Sections |
| Lakeview Water District Wells | Taxlots | QQ |
| Well Database Locations | | |



Lakeview Water District Exhibit Map