



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

March 19, 2010

JOSEPH F JAMES
BROWN JAMES & SWENSON
130 FOURTH AVENUE WEST
GOODING ID 83330

Re: Permit No. 37-07842, in the Name of the Idaho Water Resource Board

Dear Mr. James:

This correspondence replies to your letter of May 8, 2009 addressed to David R. Tuthill, Jr., former director of the Idaho Department of Water Resources ("Department" or "IDWR"). Mr. Tuthill resigned as director effective June 30, 2009. I presently serve as interim director of the Department.

Your letter expressed concern about the potential diversion of water from the Little Wood River for recharge purposes under water right permit no. 37-07842 held by the Idaho Water Resource Board ("IWRB"). The permit authorizes the diversion of up to 800 cfs of water from the Little Wood and Big Wood rivers to be delivered through the Dietrich and Richfield Canals for ground water recharge purposes. Your letter was sent on behalf of five clients represented by your office who own water rights for hydropower purposes on the Little Wood River or Malad River downstream from the point of diversion for permit no. 37-07842.

Your letter traces the history of permit no. 37-07842 from the filing of the application for permit on June 30, 1980 and its approval on June 2, 1982 through the assignment of the permit by the Lower Snake River Aquifer Recharge District to the IWRB on May 13, 1999. The file shows that the permit was lapsed on June 5, 1992 for failure to submit timely proof of beneficial use, but IDWR subsequently reinstated the permit on December 1, 1993 based on proof filed July 27, 1992, and advanced the priority date of the permit to August 25, 1980. As your review of the file concluded, it does not appear that beneficial use of water for recharge purposes has occurred under this permit to date, despite the confusion in the record on this issue. Following assignment of the permit to the IWRB, the Department twice extended the proof due date for the permit on April 3, 2000 and again on August 25, 2004 based upon the provisions of section 42-204(4), Idaho Code, which provides as follows:

In connection with permits held by ... the Idaho water resource board, whether acquired as the original applicant, by assignment or otherwise, the director of the department of water resources may extend the time for completion of the works and application of the water to beneficial use for such additional period or periods of time as he may deem necessary upon

Mr. James
March 19, 2010
Page 2

application supported by a showing that such additional time is required by reason of the status of plans, authorization, construction fund appropriations, construction, or any arrangements which are found to be requisite to completion of the construction of such works.

On June 1, 2009, the IWRB submitted a further request for extension of time to file proof of beneficial use under permit no. 37-07842 until June 1, 2014. That request remains pending before the Department.

Your letter states that your clients intend to protest any proposed diversion of water under Permit No. 37-07842, or any further development of the permit. In that regard, you request notice of any future decisions regarding the permit and ask if there are presently any administrative remedies available to your clients. No administrative remedies are presently available. Based on your request you will be provided notice of the Department's action on the IWRB's pending request for extension of time to file proof of beneficial use under permit no. 37-07842. If your clients are aggrieved by the Department's action on the request for extension of time, they are entitled to request a hearing before the director to contest the action pursuant to section 42-1701A(3), Idaho Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Spackman", with a stylized flourish at the end.

Gary Spackman
Interim Director

c: Idaho Water Resource Board