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May 30, 2007

RECEIVED

MAY 31 2007

Department of Water Resources
Eastern Region

Ernie Carlson
Idaho Dept of Water Resources
Eastern Division
900 N. Skyline Drive
Idaho Falls, ID 83402

Re: Permit No. 11-7342

Dear Ernie:

I left a couple messages with you last week about this matter. Because I haven't received a response, I thought I would send this letter in the meantime.

Our office currently represents John and Julie Franson. A few years ago, they purchased property near Soda Springs to which Permit No. 11-7342 was appurtenant. As part of the purchase, an "Assignment of Permit" was filed with IDWR on April 30, 2003, to change ownership of the permit to the Fransons.

Sometime afterwards, they were contacted by Cindy Bird who advised them that a field examination would be scheduled for purposes of licensing the water right. However, a field exam never occurred and the enclosed letter was instead sent to the Fransons. The letter advised that the permit was "being recommended as voided" because "proof of beneficial use was not made in a timely manner" and because "beneficial use was not established."

However, records on file with IDWR and available on the internet show that the prior permit owner did in fact file "Proof of Beneficial Use" on May 3, 1989 and that IDWR completed a "Proof of Beneficial Use Analysis Sheet" showing that the permit was reinstated and that proof was accepted even though it was slightly late. On August 9, 1989, IDWR sent a letter to the prior permit owner acknowledging receipt of the proof and advising that a field examiner would contact them to arrange for a field exam for purposes of licensing the permit.

Because IDWR accepted the proof of beneficial use submitted by the prior permit owner, the statement by Ms. Bird in her letter that "proof of beneficial use was not made in a timely manner" is confusing and does not seem to be correct.

Ms. Bird's other statement in her letter that "beneficial use was not established" is also a bit confusing. The proof of beneficial use filed by the prior owner indicated that it had been put to beneficial use by at least 1984 which was five years before the proof was filed in 1989. And no field exam was ever completed either confirming or contradicting the proof.

Ms. Bird seems to be concerned in her letter about the fact that the property was placed in CRP in 1987. However, the proof of beneficial use indicated that it had been beneficially used at least three years before being placed in CRP. In addition, Idaho Code § 42-224 (Exceptions or Defenses to Forfeiture) would seem to prevent the voiding of this particular permit. It is also interesting to note that the placement of the land into CRP would only affect the use of the water under the permit for irrigation purposes. It would not affect the other uses allowed under the permit for domestic and stockwater purposes.

It would seem that Ms. Bird's letter recommending that the permit be voided may be incorrect or at the very least premature.

In sending this letter to you, we are seeking direction concerning this matter. Ms. Bird's letter does not seem to be a "formal" IDWR recommendation but rather a notice advising that such a recommendation will be forthcoming. We understand that a formal objection is not due until after a formal recommendation is issued. However, we felt it might be more prudent and efficient to address this matter as soon as possible.

Our experience at this law firm with Ms. Bird has been quite positive in the past. It appears that there may simply have been an oversight or inadvertent mistake with regard to this matter. However, there may have a conflict of interest between Ms. Birds and the Fransons which I would like to discuss with you by telephone. I look forward to your call.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott J. Smith", with a stylized, flowing script.

SCOTT J. SMITH

Enclosure

Cc: John Franson



State of Idaho

DEPARTMENT OF WATER RESOURCES

15 W Center Street, Soda Springs, Idaho 83276-1575

Phone: (208) 547-3993 FAX: (208) 547-3939 www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

April 10, 2007

RECEIVED

MAY 31 2007

Department of Water Resources
Eastern Region

Mr & Mrs. John Franson
1349 Homestead Lane
Soda Springs, ID 83276

REF: Permit 11-7342

Subject: Voided permit

Dear Mr. & Mrs. Franson:

I recently contacted you in regards to an assignment of permit and a required field examination for the above referenced permit number. This original permit was applied for in 1983 for domestic, stockwater and irrigation with proof of beneficial use due (Idaho Code 42-217) in 1989. The land under this permit was placed into the Conservation Reserve Program (CRP) in 1987 before proof of beneficial use was made. According to your assignment of permit you purchased the ground in 2003 and built your home in 2005.

Therefore, since proof of beneficial use was not made in a timely manner on this permit it's being recommended as **VOIDED** and you must make a new application for permit to cover your domestic development.

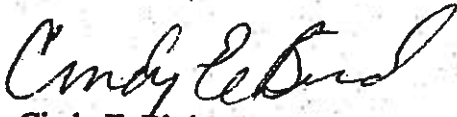
This permit was not perfected into a water right because beneficial use was not established and therefore doesn't qualify for protection when the land was placed into CRP. A permit is not considered to be a water right unless the water is being beneficially used and the proof due was made in a timely manner.

Under Idaho Code 42-201 your water use **REQUIRES** a water right. Please visit our website at www.idwr.idaho.gov and download form 202 12/99 with the instructions and filing fees. Your priority date will be based on the date you file the new application for permit with the Department. So I would suggest doing it as soon as possible.

This part of the state is closed to any new appropriation of water other than domestic in home use only. Therefore, you **will not** be able to irrigating anything outside your home under the new permit. If you continue you will be subject to fines.

If you have any questions, please feel free to contact me at 547-3993 or visit our website to learn more about water rights at www.idwr.idaho.gov.

Respectfully,

A handwritten signature in cursive script, appearing to read "Cindy E. Bird".

Cindy E. Bird
Senior Water Resource Agent