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DEPARTMENT OF WATER RESOURCES

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WATER RESOURCES
WESTERN REGION

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March 16, 2010

Of Counsel:
THOMAS J. McCABE

VIA HAND DELIVERY

Steve Lester
Idaho Department of Water Resources
Western Region
2735 Airport Way
Boise, ID 83705

Re: Permit No. 65-23245
James W. Smith and/or Mary B. Smith

Dear Mr. Lester:

This letter is an attachment to a Request for Extension of Time to submit proof of beneficial use on the above water right. Our firm check in the amount of \$50.00 is enclosed.

As I understand, the Permit holders have submitted Proof of Beneficial Use. However, after conferring with them they have agreed that I should go ahead and submit a Request for Extension of Time within which to fully put the water to beneficial use. The purpose of this letter is to explain the reasons for the request.

Background Information. On behalf of the permit holders I filed the Application with the Department November 20, 2007. The Permit was issued April 23, 2008, and required Proof of Beneficial Use to be submitted on or before April 1, 2010.

As soon as the Permit was obtained, the permit holders contacted a well driller to drill the well. The well was completed June 10, 2008 (Well ID. No. 421257). It was anticipated that sufficient water would be found at a depth of around 200 feet. However, the well was drilled to a depth of 423 feet in order to obtain a satisfactory supply. Part of the land to be irrigated (approximately 29 acres) lies on the west side of Squaw Creek. The well is on that side of the creek. In addition, there are approximately 17 acres of land to be irrigated lying on the east side of the creek. In 2008 all of the land on the west side of Squaw Creek was irrigated from the well using sprinkler lines. Also in 2008, the stock water use was made but only on the west side of Squaw Creek.

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The Proof of Beneficial Use was submitted by the permit holders who had not planned to commence irrigation of the land on the east side of the creek before April 1. However, I am recommending to the permit holders that they not act as they have planned but to submit this Request for Extension of Time within which to put the water to beneficial use on that side of the creek. The purpose of this letter is to explain the reasons for that recommendation.

Reasons for Requesting Extension. There are two reasons for the request, both involve the Federal Clean Water Act. One relates to the uncertainty of whether the Department will require that the conveyance system be detailed prior to the beneficial use exam, and the second relates to the necessity of obtaining approval to pump water from the well into the creek and taking it back out downstream to irrigate the land on the east side of the creek.

The Application did not detail the conveyance system by which water from the well was conveyed to the places of use and more specifically how one is to get the water across the creek to irrigate the land lying on the east side of the creek. One possibility is to convey the water across the creek in a pipe, a distance of roughly 30 feet, and continue the pipe line approximately a quarter mile south to irrigate the remaining 17 acres. The other possibility, which is what the permit holders planned on doing, was to pump water from the well into the creek and pump the same quantity of water back out of the creek a quarter of a mile downstream to irrigate the land on the east side of the creek.

Under the Clean Water Act a NPDES permit must first be obtained from the EPA if the water injected into the creek is "polluted." The word "polluted" has been very broadly defined. Violation of the Act can be a felony. Idaho DEQ water quality standards for Squaw Creek classify the creek as having a water quality appropriate for the protection and maintenance of a viable aquatic life community for cold water species and as waters which provide a habitat for active self-propagating population of salmonid fish and as a primary contact for recreation. Therefore, several factors regarding the nature of the water from the well must first be resolved before attempting to make a discharge into the creek.

I have contacted Idaho DEQ and have been verbally advised that there probably will not be an issue. However, before proceeding to irrigate the land on the east side of the creek by putting water from the well into the creek, I want written approval from either DEQ or the EPA under the Clean Water Act before the permit holders start using the creek as part of their conveyance system. Therefore, a request for extension of time through April 30, 2011, is being made to obtain that approval.

The other reason for the request is a little more subtle. I understand that formal documentation of the conveyance system actually occurs during the beneficial use examination and will likely include Idaho DEQ input prior to any licensing. However, if the conveyance system to the land on the east side of the creek must be detailed prior to the beneficial use exam including Idaho DEQ input, we

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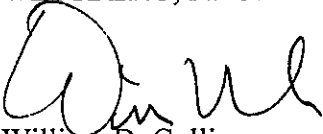
need an extension of time for proof of beneficial use for that additional reason. Therefore, a request is similarly being made to extend the date to April 30, 2011.

In going back and looking at what the Department has done in the past, I see that it has involved Idaho DEQ in a similar case where water from a well was put in a creek and then pumped back out of the creek downstream. In that case, Idaho DEQ simply reported to the Department as part of the field exam that it saw no issue with the injection of the well water into the creek after having first made an analysis of the water. I do not know whether your department initiated the report from Idaho DEQ or not.

If this letter does not provide you with all of the information needed to act upon the extension request, please let me know what additional information you need.

Very truly yours,

WESTBERG, McCABE & COLLINS, CTD.



William D. Collins

WDC/ml

cc James W. Smith