

Peppersack, Jeff

From: Ed Lawson [eal@lawsonlaski.com]
Sent: Wednesday, December 30, 2009 3:29 PM
To: Charles G. Brockway; Peppersack, Jeff
Cc: Donna Kelsey
Subject: RE: 37-8205 revised field exam

Jeff,

We have confirmed there was a MAJOR snow storm in the Valley on October 7, 2009. I will provide supporting documentation under separate cover.

/s/

Edward A. Lawson
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From: Charles G. Brockway [mailto:charles.g.brockway@brockwayeng.com]
Sent: Wednesday, December 30, 2009 2:35 PM
To: Peppersack, Jeff
Cc: Ed Lawson; Donna Kelsey
Subject: 37-8205 revised field exam

Jeff,

Attached is a revised field exam and proof of beneficial use for permit 37-8205. Please confirm that you received it, and I will send a hard copy by mail tomorrow. Also, assuming everything is in order, could you please ensure that no lapse notice is sent out?

I believe the items we discussed yesterday in our telephone call are addressed in the revised report, as best as I understand them. Specifically, the report has been revised in the following areas:

- A discussion has been included confirming that beneficial use in the pond and for space heating was occurring prior to the proof date.
- A review of weather data was made to determine whether snowfall occurred prior to the proof date. It does appear reasonably likely that some small amount of snow did occur, but the Department will need to evaluate this and make a judgment.
- A technical memorandum is included pertaining to the annual volume required by the original contemplated uses. I feel comfortable that the original use volume adequately covers the actual use.
- A technical memorandum is included to address potential consumptive use increase due to introduction of heated water to the pond. This analysis shows that additional consumptive use is anticipated, and that the Department should condition the license accordingly relative to mitigation.
- Better clarification was made of the examiner's recommendations as to the compliance with each of the permit conditions.

It is my understanding from our telephone call that the Department will be able to accept the field exam and proceed with the licensing process, including the appropriate amendments either via the "regular" amendment process or through a licensing amendment. I also understand that the Department will be able to license the water right with appropriate conditions relative to mitigation requirements.

If there are any questions about the analyses, please let me know.

Thanks,
Chuck

Charles G. Brockway, Ph.D., P.E.

Brockway Engineering, PLLC
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(208) 736-8543
charles.g.brockway@brockwayeng.com

All information, calculations, maps, drawings, or other documents transmitted via e-mail are preliminary unless explicitly stated in the e-mail text or in the documents themselves.

Peppersack, Jeff

From: Peppersack, Jeff
Sent: Wednesday, December 30, 2009 4:50 PM
To: 'Charles G. Brockway'
Cc: Ed Lawson; Donna Kelsey
Subject: RE: 37-8205 revised field exam

Chuck,

Sorry for any confusion. When we were discussing the potential withdrawal of the order voiding the application, I tried to make it clear that the Department could issue the approval of the amendment with the condition requiring mitigation. We normally do not even like to issue a permit (or amendment) with a condition requiring a future mitigation plan because we've had permit holders diverting and using the water while trying, unsuccessfully, to secure water for a mitigation plan. I am not prepared to issue a license with that type of condition because the license should represent the water right with the mitigation plan already implemented.

Jeff

From: Charles G. Brockway [mailto:charles.g.brockway@brockwayeng.com]
Sent: Wednesday, December 30, 2009 3:53 PM
To: Peppersack, Jeff
Cc: Ed Lawson; Donna Kelsey
Subject: RE: 37-8205 revised field exam

Jeff,

I was under the clear impression that the Department would issue the license with a condition limiting diversion until an acceptable mitigation plan was provided. I'm sure we discussed this yesterday, but perhaps I misunderstood.

Chuck

Charles G. Brockway, Ph.D., P.E.
Brockway Engineering, PLLC
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(208) 736-8543
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From: Peppersack, Jeff [mailto:Jeff.Peppersack@idwr.idaho.gov]
Sent: Wednesday, December 30, 2009 3:46 PM
To: Charles G. Brockway
Cc: Ed Lawson; Donna Kelsey
Subject: RE: 37-8205 revised field exam

Chuck,

I received the exam. Based on a quick review, it looks like you've addressed prior concerns adequately, so I will consider the exam acceptable. Since the exam was resubmitted within the 30-day period provided, I do not plan to send a lapse notice. Based on your estimate, it is safe to assume that mitigation is required for consumptive use. As we discussed yesterday, we could withdraw the order voiding the application for amendment and conditionally approve the amendment subject to mitigation. The alternative, as you suggested, is to wait until licensing to pursue a licensing amendment. In either case, the Department will not issue a license until an acceptable mitigation plan is provided.

Regarding beneficial use for snowmelt, the evidence is pretty limited. I can't promise anything, but it would sure help if someone could provide an affidavit or other type of evidence that there was accumulated snow at the place of use and the heated system actually melted snow. Without something to support snowmelt resulting from the system, the Department will likely exclude that from licensing.

Whish you all a happy new year!

Jeff

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