



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

October 6, 2009

ROBERT E WILLIAMS
FREDERICKSEN, WILLIAMS, MESERVY & LOTH SPEICH LLP
PO BOX 168
JEROME ID 83338-0168

Re: Permit 47-8246 – Johnny and Ginny Sudik

Dear Mr. Williams:

On January 14, 1999, the Idaho Department of Water Resources (IDWR) approved permit to appropriate water no. 47-8246 in the name of Johnny R. Sudik (Sudik) and Northwest Farms Credit Services, ACA. Permit 47-8246 authorized the diversion of 0.40 cfs from ground water for stock water and commercial uses. Condition no. 8 of the permit required that the "right holder shall annually recharge 113.0 af of surface water to the aquifer through his recharge pond."

On March 24, 2000, Sudik submitted proof of beneficial use for the permit. A beneficial use field report for the permit documented a ground water recharge pond. The Twin Falls Canal Company (TFCC) expressed concern that the location of the pond could jeopardize the integrity of TFCC's canal. As a result, Sudik and TFCC asked for a modification of the permit condition. In response, IDWR temporarily allowed Sudik to mitigate by leaving water in the TFCC's system while an alternate plan of mitigation was formulated. Two subsequent extensions of time allowed continued mitigation to occur in the TFCC delivery system. The last extension expired on May 1, 2005.

On June 9, 2005, IDWR wrote a letter to Sudik stating that IDWR is not inclined to continue to allow leaving water in the TFCC canals as permanent mitigation for withdrawal of ground water under the permit. IDWR requested submittal of an alternate mitigation plan within 60 days of the date of the letter.

On June 22, 2005, Sudik and TFCC requested an additional extension of time, through May, 2009, to allow continued mitigation to occur in the TFCC delivery system. IDWR did not act on the request. On June 18, 2008, IDWR wrote a letter to promote a discussion about development of a mitigation plan that would address and comply with condition no. 8 of the permit. The letter expressed concern that leaving water in the TFCC delivery system presumably just delivers water to users of the canal system, and does not add any additional water to the aquifer. In a letter dated July 1, 2008, you responded, on behalf of Sudik, stating plans to provide a document either agreeing that the original pond could be used for the required recharge, or with terms of an alternate plan for mitigation.

In a letter dated November 7, 2008, you provided an update of efforts to formulate a mitigation plan for the permit. You indicated that you hoped to have matters firmed up within 30 days.

On July 30, 2009, the Department received a letter from Brian Higgs of Water Well Consultants requesting preliminary review of a proposal to transfer a ground water right to the Sudik Dairy. IDWR's Southern Region office responded to Mr. Higgs, indicating that the applicant would need to provide a technical analysis to demonstrate impacts to reaches of the Snake River would not result in injury to existing water rights as a result of the transfer. I am not aware of any further activity to provide mitigation for the permit.

IDWR expects that diversion of ground water under the permit will be mitigated, either through the original plan approved under the permit, or through an alternate plan approved by the Department. Any diversion of water under the permit without mitigation is an illegal diversion of water and will be grounds for issuance of a Notice of Violation and Cease and Desist Order and/or cancellation of the permit.

IDWR will not grant additional extensions for continued mitigation to occur in the TFCC delivery system. Please respond within 30 days of the date of this letter to provide information demonstrating how mitigation will be accomplished for continued diversion of ground water under the permit. One alternative for temporary diversion of ground water is to rent water from an existing valid water right from the Water Supply Bank. You may contact Aaron Marshall of this office for information about the Water Supply Bank.

Sincerely,



Jeff Peppersack
Chief, Water Allocation Bureau

cc: Johnny Sudik
Ginny Sudik
3332 N 3500 E
Kimberly ID 83341

Aaron Marshall, IDWR
Tim Luke, IDWR
Allen Merritt, IDWR Southern Region