



State of Idaho

DEPARTMENT OF WATER RESOURCES

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April 17, 2001

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

GIVENS PURSLEY LLP
MICHAEL C CREAMER
PO BOX 2720
BOISE ID 83701

RE: Water Right Permit Nos. 63-31134, 63-31135, 63-31136

Dear Mr. Creamer:

As you know, the department is in the process of reviewing the applications for the above referenced permits. The applications submitted include a mitigation plan in response to the processing hold on non-consumptive water uses in the Treasure Valley. We have reviewed the applicant's request to mitigate evaporative losses from the proposed groundwater fed ponds by drying up 10.5 acres of historically irrigated land and supplementing it with surface water delivered to the property by the Eureka Water Company.

As we discussed during our telephone conversation, two issues need to be addressed in the permitting process. First, since the applicant specifies that the canal company water constitutes part of the mitigation plan, the right holder will need to retain ownership of the Eureka Water Company shares and shall not use the portion distributed through the pond system for irrigation. This condition is intended to ensure that the mitigation plan remains feasible and active by restricting the future sale of canal company shares. It will appear on the permits as a condition of approval.

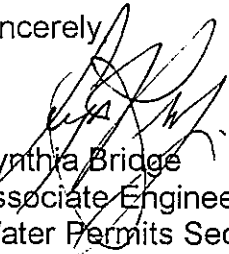
Second, according to Water Appropriation Rules 45.01.a. and 45.01.e. (IDAPA 37.03.08.45.01a. & e.) a proposed use should not conflict with local public interests or injure another water right. Part of the mitigation plan is contingent on the use of shares from the Eureka Water Company irrigation water right. By allocating a portion of these shares to a use other than irrigation, this water will not be applied to the beneficial use for which it was appropriated. It is therefore possible that this portion of the Eureka Water Company's water right could be lost through nonuse or forfeiture as defined by Idaho Code 42-222.

You mentioned that the applicant has communicated the details of the project to the Eureka Water Company. In order to process the applications for permit, information should be submitted documenting that the Eureka Water Company has been informed and approves of the changes of water use proposed in the application. You also voiced concern that receiving

documentation from the canal company could take some time. However to confirm that the proposed permits do not conflict with local public interest we are required to hold any action on the application pending receipt of the necessary information.

Please feel free to contact this office if you have any questions.

Sincerely



Cynthia Bridge
Associate Engineer
Water Permits Section