



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

July 17, 2009

CHARLES G. BROCKWAY PE
BROCKWAY ENGINEERING PLLC
2016 NORTH WASHINGTON ST SUITE 4
TWIN FALLS ID 83301

RE: Water Right Permit 37-8205 - Sun Valley Land & Minerals

Dear Mr. Brockway:

This letter is a response to your letter dated July 1, 2009 regarding the permit referenced above. In your letter, you responded to the Department's technical review of your engineering report and concluded that you do not believe any revision to the report is warranted. Although revision to some elements of the report would improve the estimates of water requirements, I would like to focus on the last part of your letter regarding consumptive use. In addition, as I indicated in prior correspondence, the applicant needs to demonstrate that the proposed uses will not enlarge the overall diversion and use of water above the amount authorized in the original permit.

You noted that a condition of the original permit required that the use shall be nonconsumptive and any future finding of consumptive use would require mitigation to continue diversion. The condition applied to the uses of water as approved in the original permit since those uses were presumed to be nonconsumptive at the time of approval. Because the application seeks amendment of the permitted uses, the Department must ensure that the proposed uses will not consume water. The proposed use to heat a large pond will likely result in consumptive use of water due to increased evaporation. The proposed uses cannot be authorized unless it can be shown that the uses will not result in consumption of water or mitigation is proposed to offset consumption within the Big Wood River Ground Water Management Area and the Snake River Moratorium Area.

In addition, Section 42-211, Idaho Code requires the Department to examine the application and approve it "...if approval thereof would not result in the diversion and use of more water than originally permitted..." The permit authorizes diversion of 5 cfs and your engineering report indicates less than 2 cfs can be developed; however, the total diversion volume anticipated for the original permitted uses also cannot be enlarged through the amendment process. The applicant bears the burden to demonstrate that the proposed new uses will not increase the overall diversion and use of water as approved in the original permit.

The Department will hold the application for 30 days to allow the applicant to provide the necessary information. If the information is not received within 30 days, the Department will take action to void the application. If you have any questions, please call me at 208-287-4948.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Peppersack', written over the printed name.

Jeff Peppersack, Chief
Water Allocation Bureau

cc: Sun Valley Land & Mineral Inc.
Allen Merritt, IDWR Southern Region
Hal Anderson, IDWR