

MEMORANDUM

To: Lyle Swank, Ernest Carlsen, Dave Carlson
Cc: Jeff Peppersack, Shelley Keen, Sean Vincent, Jerry Rigby, Roger Warner, Jamie Wood, George Brown
From: Gary Spackman 
Date: June 9, 2009

**Re: Application to Appropriate Water in the Name of DKJ Farms LLC
(Jeppesen)**

Jeppesen diverts water from upper Moody Creek, tributary to the Teton River, pursuant to water rights that authorize use of the water for irrigation. Moody Creek heads southeast of Rexburg and flows from south to north across the Rexburg Bench. The flow reductions in Moody Creek caused by Jeppesen's diversion have caused a dispute with individuals and entities interested in preserving higher flow rates in Moody Creek for fish habitat.

Jeppesen and the other interested parties proposed that Jeppesen construct a ground water well, divert ground water to replace the Moody Creek water, and leave the water previously diverted from Moody Creek in the creek to mitigate for simulated depletions to surface water sources caused by the ground water withdrawals. Jeppesen has prepared an application to appropriate water with the Idaho Department of Water Resources ("Department") seeking a water right to divert ground water.

The spreadsheet version of the Eastern Snake River Plain Aquifer ("ESPA") ground water model predicts that a ground water diversion at the location of the point of diversion described by the application will deplete surface water flows in both the Henrys Fork of the Snake River and the South Fork of the Snake River. Water left in Moody Creek could possibly mitigate the Henrys Fork for depletions, but Moody Creek water cannot gravity flow into the South Fork of the Snake River.

On February 9, 2009, Roger Warner of Rocky Mountain Environmental Associates, Inc., submitted a report to the Department describing the subsurface geologic strata between the proposed point of diversion and the South Fork of the Snake River. The report concluded it is unlikely that significant ground water discharges from the Rexburg Bench south into the South Fork of the Snake River.

In a memorandum dated March 11, 2009, Sean Vincent of the Department recognized the uncertainty raised by the report, but also stated that he believed the ESPA ground water model is the best tool for simulating depletions.

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Based on the Warner report and the response by Sean Vincent, there is significant uncertainty about the extent of hydraulic connection between ground water on the Rexburg Bench and the South Fork of the Snake River. Consequently, this memorandum authorizes Eastern Region staff to process the Jeppesen application without requiring a mitigation plan to compensate simulated depletions in the South Fork of the Snake River. The application is still subject to protest, however. In addition, this memorandum does not predetermine the hydraulic relationship between the ground water proposed to be diverted and the flows in surface water sources.

cc: ^{AS} 22-13479 & 22-265E

SCANNED
JUN 24 2009