



State of Idaho

DEPARTMENT OF WATER RESOURCES

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WESTERN REGION

July 17, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

TIMOTHY DEE CAMPBELL
RT 2 BOX 821
GRANGEVILLE ID 83530

AND

DAN ESSLINGER
JENNIFER MC GARY
237 SLATE CREEK ROAD
WHITE BIRD ID 83554

COPY

**RE: COMPLAINT FILED AGAINST TIMOTHY DEE CAMPBELL BY DON
ESSLINGER AND JENNIFER MC GARY**

Ladies and Gentlemen:

In March and February of 2007, Don Esslinger and Jennifer McGary submitted a complaint to the Western Region Office of the Idaho Department of Water Resources (IDWR) concerning a pond constructed by Timothy Campbell under water right permit 79-14012. Prior to addressing the complaint, we felt that the best course of action would be to perform the licensing exam, which included an on sight investigation of the pond and surrounding area. An IDWR Senior Water Right Agent, IDWR Dam Safety Engineer, and a representative from the Idaho Fish and Game (IDFG) performed the field exam on 6/13/2007. The field exam brought to light four issues that need to be dealt with concerning this complaint.

The first issue deals with the timing of the filing of the complaint. The complaint states that the dam was constructed in 2002 and failed in 2003 prior to the approval of the application for permit on January 9, 2003. Although Mr. Campbell may have begun construction in 2002, all the photos supplied are dated 2003, which would be very close to the time the application was approved. Idaho Code (IC) § 42-1717 places damage liabilities and obligations clearly on the dam owner. Relief from any damages caused by the dam failure in 2003 would need to be addressed through the civil courts.

The second issue deals with the pond size and usage. The field examiner measured the surface area of the pond to be approximately 118 ft X 130 ft with a depth of 1 to 3 feet. This would place the surface area of the pond at 0.5 acres. The surface area was confirmed using aerial photography and ArcView. Using the standard coefficient of 0.4 to calculate the average pond depth, the pond volume was determined to be 0.6 acre-feet of volume $[0.5 \text{ acres} \times (3 \text{ ft depth} \times 0.4) = 0.6 \text{ acre-feet of volume}]$. With a surface area of 0.5 acres, the pond would also have some evaporation losses. Using the free water evaporation for this area is approximately 30 inches of water per acre. Therefore, an additional 1.3 acre-feet of water would evaporate from the pond $[(30 \text{ inches} / 12 \text{ feet}) \times 0.5 \text{ acre surface area} = 1.3 \text{ acre feet of water evaporation}]$. This puts the total water appropriated at 1.9 acre-feet of water, instead of the 0.3 acre feet requested in the permit. I recommend that Mr. Campbell file this application for Aesthetic use for the entire pond to avoid the need to release water from the pond when livestock are not present on the property. Mr. Esslinger and Ms. McGary will be offered the opportunity to protest this application through the public notice process. **Mr. Campbell will have 14 days to file a second application for permit for the additional water needed.**

The third issue relates to the construction of the pond. In accordance with permit condition of approval number 8, Mr. Campbell was required to comply with all fish screening requirements of the IDFG. Although Mr. Campbell contacted the National Resource Conservation Service (NRCS) for recommendations regarding pond construction, the IDFG representative identified specific issues that should be addressed to fulfill fish migration and habitat standards. Mr. Campbell will need to work with the IDFG to bring this pond up to their standards. It was determined that those issues were minor enough that the current water right could be licensed. **Mr. Campbell will need to comply with IDFG recommendations or have an operation plan approved by IDFG by 12/31/2007. The license for water right 79-14012 will have conditions similar to the following:**

Prior to storing water each year the owner of this right must be within compliance of all Idaho Fish and Game recommendations for maintaining the fish migration and habitat for John's Creek.

The spillway for this dam must be constructed and maintained at all time to allow fish passage and to prevent any erosion of the stream banks or channel.

The fourth and final issue was discovered during the field investigation. The field investigation team observed a pond on the Esslinger and McGary property approximately 150 feet downstream of the Campbell pond, however, no water right for that pond is shown in the department records. It is a property owners responsibility to ensure that all water uses are properly recorded. **Mr. Esslinger/Ms. McGary, please provide our agency proof that a water right exists for your pond or there is an error in our records. You shall cease and further diversion or use of water until this matter is addressed.**

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I believe all four of the above issues can be reconciled with the remedies required in this letter. Hopefully, once the above issues are addressed there will be no further disputes concerning these water uses. **If the above requirements are not met by the time frames listed above, it could result in revocation of the permit/license and/or penalties as established by Idaho Code § 42-1701B.**

If you have any questions or concerns please contact me at the above address.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel A. Nelson", with a long horizontal flourish extending to the right.

Daniel A. Nelson
Sr. Water Right Agent

CC Ray Henikey – IDFG
Cynthia Bridge Clark – IDWR Dam Safety Engineer