

Keen, Shelley

From: Hensley, Harriet [harriet.hensley@ag.idaho.gov]
Sent: Friday, April 25, 2008 8:05 AM
To: Keen, Shelley
Subject: FW: draft letter confirming agreement with proposed license terms

FYI

Harriet A. Hensley
Deputy Attorney General
Natural Resources Division
Office of the Attorney General
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4543
fax (208) 854-8072
harriet.hensley@ag.idaho.gov

-----Original Message-----

From: Randy Budge [mailto:rcb@racinelaw.net]
Sent: Thursday, April 24, 2008 1:04 PM
To: Hensley, Harriet
Cc: Randy Budge
Subject: RE: draft letter confirming agreement with proposed license terms

Hi Harriet:

The letter is fine. Would also like to review the revised proposed license which you can forward or I assume will be enclosed with the letter.

Sorry for the delayed reply. Your letter arrived the day after I left on vacation. I will be back in the office on Tuesday and upon receipt will review the license, get back with any concerns and forward to GIC for approval.

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey
201 E. Center
Pocatello, ID 83201
208-232-6101 Ext.340
<rcb@racinelaw.net>

From: Hensley, Harriet [mailto:harriet.hensley@ag.idaho.gov]
Sent: Tuesday, April 15, 2008 10:18 AM
To: Randy Budge
Subject: draft letter confirming agreement with proposed license terms

Any concerns with forwarding a final of the attached draft letter to you?

Harriet A. Hensley
Deputy Attorney General
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4/25/2008

COPY



RECEIVED

APR 24 2008

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

April 22, 2008

Mr. Randall Budge
Racine Olson Nye Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, Idaho 83204-1391

Re: Georgetown Irrigation Company
Water Right Permit No. 11-07219

Dear Randy:

I have been advised that, pursuant to section II. A. 4. of the AGREEMENT BY AND BETWEEN GEORGETOWN IRRIGATION COMPANY, INC., AND THE STATE OF IDAHO, DEPARTMENT OF FISH AND GAME, GOVERNING TERMS AND CONDITIONS FOR GEORGETOWN IRRIGATION COMPANY'S APPLICATION FOR WATER RIGHT LICENSE ON GEORGETOWN CREEK TO BE SUBMITTED TO THE IDAHO DEPARTMENT OF WATER RESOURCES (Agreement), Georgetown Irrigation Company (GIC) has agreed to the installation of a fish passage facility on Georgetown Creek at the point of diversion for water right permit no. 11-07219 and water right no. 11-290 to allow for upstream and downstream migration of Bonneville Cutthroat Trout. Section II. A. 4. of the Agreement also provides for the relocation of the continuous bypass flow monitoring device from its current location to the point of diversion at the time a fish passage facility is installed.

The Idaho Department of Fish and Game (IDFG) has been working with the Idaho Department of Water Resources (IDWR) to revise the version of the draft license for water right permit no. 11-07219 that was reviewed and approved by GIC in November 2007. The attached revised version governs bypass flow measurement requirements when a fish passage structure is installed at the point of diversion. The IDWR has advised that the attached version of the license for water right no. 11-07219 will be issued once IDWR receives letters from IDFG and GIC confirming their agreement with the terms set forth.

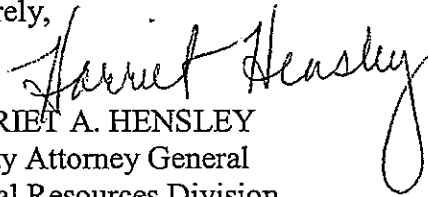
Mr. Randall Budge
April 22, 2008
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By copy of this letter, IDFG is advising IDWR that the attached version of water right license no. 11-07219 is consistent with the Agreement and that IDFG supports issuance of the same.

We will be reviewing the Agreement to determine whether the installation of a fish passage facility requires an amendment. I will give you a call to discuss any proposed revisions to the Agreement.

Thank you for your assistance and cooperation in this matter.

Sincerely,



HARRIET A. HENSLEY
Deputy Attorney General
Natural Resources Division

HAH/pb

Attachment

cc: (w/attachment)
Gary Spackman, IDWR
Shelley Keen, IDWR
Cindy Robertson, IDFG
Jim Mende, IDFG

State of Idaho
Department of Water Resources

Draft**Water Right License****Draft**

WATER RIGHT NO. 11-07219

Priority: January 12, 1981

Maximum Diversion Rate: 30.00 CFS

Maximum Diversion Volume: 19,800.0 AF

It is hereby certified that GEORGETOWN IRRIGATION CO
C/O DRUE SMITH
PO BOX 8
GEORGETOWN ID 83239

has complied with the terms and conditions of the permit, issued pursuant to Application for Permit dated January 12, 1981; and has submitted Proof of Beneficial Use on May 21, 1986. An examination indicates that the works have a diversion capacity of 48.6 cfs of water from:

SOURCE

LEFT HAND FORK GEORGETOWN CREEK Tributary: GEORGETOWN CREEK
GEORGETOWN CREEK BEAR RIVER

and a water right has been established as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>DIVERSION RATE</u>	<u>ANNUAL DIVERSION VOLUME</u>
POWER	01/01 to 12/31	30.00 CFS	19,800.0 AF

LOCATION OF POINT(S) OF DIVERSION:

LEFT HAND FORK GEORGETOWN CREEK L3 (SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$) Sec. 32, Twp 10S, Rge 44E, B.M.
BEAR LAKE County

GEORGETOWN CREEK
BEAR LAKE County

SE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ Sec. 4, Twp 11S, Rge 44E, B.M.**PLACE OF USE:** POWER

Twp Rge Sec	NE				NW				SW				SE				Totals
	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
11S 44E 7								X									

CONDITIONS OF APPROVAL

1. Use of water under this right shall be non-consumptive.
2. Rights 11-290 and 11-7219 when combined shall not exceed a total diversion rate of 70 cfs.
3. Right 11-290 is also diverted through the point(s) of diversion described above.
4. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.
5. At each authorized point of diversion the right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion.

Draft

Water Right License

Draft

WATER RIGHT NO. 11-07219

CONDITIONS OF APPROVAL CONTINUED

6. When diverting and using water in connection with this right, the right holder shall maintain an instantaneous minimum bypass flow in the amount of 5.0 cfs past the point of diversion on Georgetown Creek. Until a fish passage structure is installed at the point of diversion on Georgetown Creek, the bypass flow shall be measured at the crested weir located within the SWNE, Section 4, T11S, R44E, B.M., approximately 150 to 200 feet downstream from the point of diversion, or at a point as close as possible to the location of the crested weir if the weir is removed or damaged, or at the location of the replacement measuring device if the crested weir is replaced. When a fish passage structure is installed at the point of diversion on Georgetown Creek, the 5.0 cfs bypass flow shall be measured in the fish passage structure from April 15 through July 15 and shall be measured in the fish passage structure or at the location of the weir or replacement measuring device as described above during the period July 16 through April 14. Deviations from the measurement locations shall be approved in advance in writing by the Department. In determining whether to authorize an alternative measurement location, the Department will consult the USDI Bureau of Land Management and/or the Idaho Department of Fish and Game as the Department deems necessary.
7. At each measurement location for the bypass flow, the right holder shall maintain a flow measuring device capable of measuring a flow of 5.0 cfs. The right holder shall also maintain a data recorder capable of continuously recording the measured bypass flow. The measuring device(s) and recording device(s) shall be of types approved by the Department.
8. By January 5 of each year, the right holder shall submit an annual report to Water District 11 documenting the instantaneous minimum bypass flow for the preceding calendar year (January 1 through December 31).
9. The rights for the use of water confirmed in this license shall be junior and subordinate to all rights for the use of water other than hydropower, within the State of Idaho that are initiated later in time than the priority of this right and shall not give rise to any right or claim against any future rights for the use of water, other than hydropower, within the State of Idaho initiated later in time than the priority of this right.
10. The diversion and use of water for hydropower purposes under this license is subject to review by the Director on or after March 1, 2021. Upon appropriate findings relative to the interest of the public, the Director may cancel all or any part of the use authorized herein and may revise, delete or add conditions under which the right may be exercised.
11. This right does not constitute Idaho Public Utilities Commission or Federal Energy Regulatory Commission approval that may be required.
12. The diversion and use of water described in this right may be subject to additional limitations agreed to by the right holder and other parties under separate agreement to which the Department is not a party and which may be enforceable by a court of law.

This license is issued pursuant to the provisions of Section 42-219, Idaho Code. The water right confirmed by this license is subject to all prior water rights and shall be used in accordance with Idaho law and applicable rules of the Department of Water Resources.