



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

October 17, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

JOHN B KUGLER
2913 GALLEON COURT N E
TACOMA WA 98422

Re: Permit to Appropriate Water No. 35-8359

Dear Mr. Kugler:

You are the owner of permit to appropriate water no. 35-8359. In November, 2007, you filed a request for extension of time for filing proof of beneficial use for permit no. 35-8359 with the Idaho Department of Water Resources ("IDWR"). In response to your request for an extension of time, on December 6, 2007, IDWR issued a Preliminary Order that indefinitely stayed development under the permit. On December 21, 2007 you requested reconsideration of the order and also requested a hearing. As a result of the request, Jeff Peppersack and I of the IDWR met with you on March 31, 2008 to discuss the order and attempted to resolve issues raised by your filing.

Idaho Code Section 42-1805 assigns powers and duties to the Director of IDWR.

In addition to other duties prescribed by law, the Director of the Department of Water Resources shall have the following powers and duties:

* * *

(7) After notice, to suspend the issuance or further action of permits or applications as necessary to protect existing vested water rights or to insure compliance with the provisions of Chapter 2, Title 42, Idaho Code or to prevent violation of minimum flow provisions of the State Water Plan.

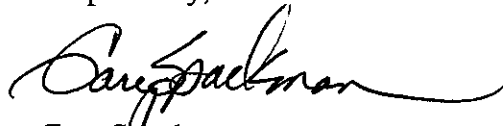
The Director has, by moratorium, limited the development under existing permits. The order that stays development issued in December, 2007 is consistent with the moratorium and with the conditions imposed on previous approvals of extensions of time.

In your request for reconsideration and for hearing, you asked to present additional information regarding expenditure of funds for the project. Given the expiration of time since any development under the permit was stayed, the opportunity to present such information for allowing development has passed.

IDWR will schedule a hearing as you have requested. The subject of the hearing, will be whether the December 6, 2007 order was appropriately issued and complies with the provisions of Idaho Code § 42-1805 or other provisions of law, whether there is water available for further development under your permit, and, as an alternative, whether you can offer mitigation that will allow further development under the permit.

This letter requests available hearing dates for you in the months of January, February, and March of 2009. Please submit the information within 30 days of the date of this letter. If you do not identify available dates, IDWR will assume all days are open and will schedule the hearing.

Respectfully,

A handwritten signature in black ink, appearing to read "Gary Spackman", with a long, sweeping horizontal line extending to the right.

Gary Spackman