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DEC 07 2007

WATER RESOURCES
WESTERN REGION

Amended

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

Ident. No.

2-10416
57-11712RECEIVED
FEB 04 2009WATER RESOURCES
WESTERN REGION

RECEIVED

DEC 06 2007

DEPARTMENT OF
WATER RESOURCES

1. Name of Applicant Gem Irrigation District Phone 208-337-3505
Mailing address P. O. Box 67 Homedale, Idaho 83628 Email _____
2. Source of water supply Snake River which is a tributary of Columbia River
3. Location of point of diversion is Township 2N 4N Range 8W 5W Sec. 32 in the NW $\frac{1}{4}$,
SE $\frac{1}{4}$, Govt. Lot _____, B.M., Owyhee County;
additional points of diversion if any: _____
4. Water will be used for the following purposes:

Amount <u>30 cfs</u> (cfs or acre-feet per year)	for <u>Irrigation</u>	purposes from <u>03/01</u> to <u>11/15</u> (both dates inclusive)
Amount _____ (cfs or acre-feet per year)	for _____	purposes from _____ to _____ (both dates inclusive)
Amount _____ (cfs or acre-feet per year)	for _____	purposes from _____ to _____ (both dates inclusive)
Amount _____ (cfs or acre-feet per year)	for _____	purposes from _____ to _____ (both dates inclusive)
Amount _____ (cfs or acre-feet per year)	for _____	purposes from _____ to _____ (both dates inclusive)
Amount _____ (cfs or acre-feet per year)	for _____	purposes from _____ to _____ (both dates inclusive)
5. Total quantity to be appropriated is (a) 30 cfs and/or (b) _____
cubic feet per second acre feet per year
6. Proposed diverting works:
 - a. Describe type and size of devices used to divert water from the source 2 15 cfs Floway pumps,
powered by 2 Fairbanks-Morse 200 hp motors
 - b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet;
total reservoir capacity _____ acre-feet
 - c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet
 - d. Is ground water with a temperature of greater than 85°F being sought? _____
 - e. If well is already drilled, when? _____; Drilling firm _____;
Well was drilled for (well owner) _____; Drilling Permit No. _____
7. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year)
8. Description of proposed uses (if irrigation only, go to item 9):
 - a. Hydropower; show total feet of head and proposed capacity in kW. _____
 - b. Stockwatering; list number and kind of livestock. _____
 - c. Municipal; show name of municipality. _____
 - d. Domestic; show number of households. _____
 - e. Other; describe fully. _____

AMENDED

9. Description of place of use: Place of use is within the boundary- Gem Irrigation District pursuant to section- Idaho Code 4323
- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below. See attached.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total number of acres to be irrigated: 22,594

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? 2-64, 2-65, 57-2118, 57-2177, 57-4104, 57-10854, 57-10901, 57-10912, and 57-10913.

11. a. Who owns the property at the point of diversion? Gem Irrigation District
- b. Who owns the land to be irrigated or place of use? Landowners within the Gem Irrigation District
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Title 43, Idaho Code

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary. This right is intended to be used in conjunction with rights 2-64 and 2-65, and a combined use remark would be appropriate.

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½"x11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. (A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.)

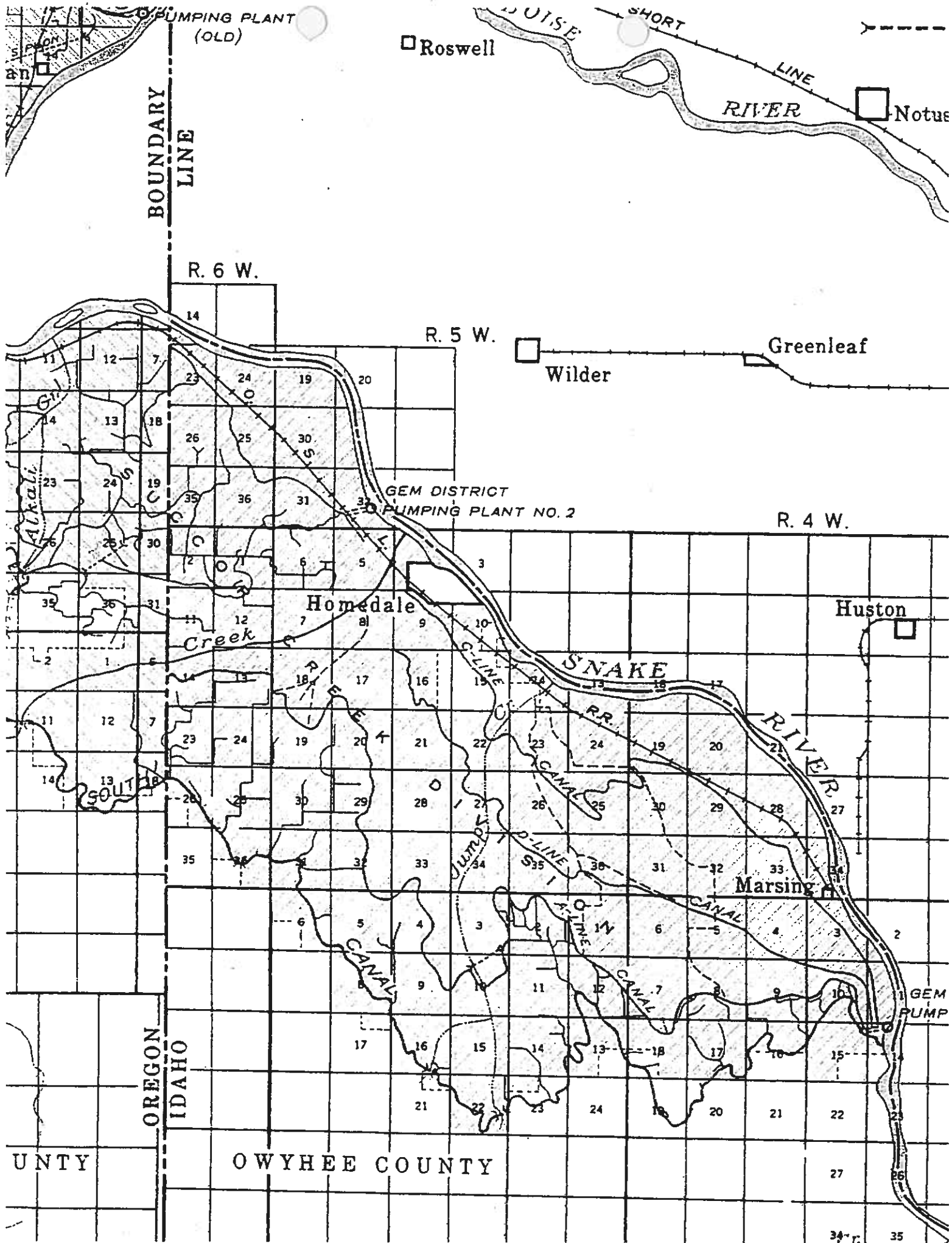
BE IT KNOWN that the undersigned hereby makes this application for permit to appropriate the public waters of the State of Idaho as herein set forth.


Signature of Applicant

ALBERT P. BAKKER
ATTORNEY
GEM IRRIGATION DISTRICT
Print Name (and title, if applicable)

For Department Use:

Received by AMB Date 12.6.07 Time 2:40 Preliminary check by VLM
Fee \$ 1,210.00 Received by AMB Receipt No. 085476 Date 12.6.07
Publication prepared by DB Date 2/26/2009 Published in OWYHEE AVALANCHE
Publication approved _____ Date _____ Dates Published MARCH 4 & 11, 2009



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APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

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Amount _____	for _____	purposes from _____ to _____	(both dates inclusive)
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Well was drilled for (well owner) _____; Drilling Permit No. _____
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 - b. Stockwatering; list number and kind of livestock. _____
 - c. Municipal; show name of municipality. _____
 - d. Domestic; show number of households. _____
 - e. Other; describe fully. _____

Buffington, Denise

From: Buffington, Denise
Sent: Friday, February 27, 2009 2:00 PM
To: 'rward@idfg.idaho.gov'
Subject: Comment Letters
Attachments: Comment letter to IDFG mult apps.doc; 55-13893 App.pdf; 65-23139 App.pdf; 02-10416 App.pdf; 55-13887 App.pdf; 55-13888 App.pdf; 55-13889 App.pdf; 55-13891 App.pdf; 55-13892 App.pdf; 67-14951 App.pdf

Please review the attached information and comment as necessary. If you have any questions regarding the attached information, please contact our office at 334-2190.

Thank You,

Denise Buffington
Administrative Assistant
Dept of Water Resources
Western Region

2/27/2009

February 27, 2009

RICK WARD
ENVIRONMENTAL STAFF BIOLOGIST
ID DEPT FISH & GAME SOUTHWEST REGION
3101 S POWERLINE RD
NAMPA ID 83686

Re: Water Right Application(s) 02-10416, 55-13887, 55-13888, 55-13889, 55-13891, 55-13892,
55-13893, 65-23139 & 67-14951

Dear Mr. Ward:

Attached are copies of one or more applications that may be of interest to your agency. Please contact the applicant(s) if your agency has concerns about the application(s). It is not necessary to provide agency comments to the Idaho Department of Water Resources (IDWR), although your comments are welcome if you think IDWR would benefit from them.

If your agency desires to file a formal protest against approval of the application(s), a written protest along with the \$25.00 protest fee for each application protested must be received in this office by March 23, 2009.

Please contact this office at 334-2190 if you have any questions regarding the application(s).

Sincerely,

Denise Buffington
Administrative Assistant

Enclosure

Buffington, Denise

From: Buffington, Denise
Sent: Thursday, February 26, 2009 5:09 PM
To: owyheeavalanche@cableone.net
Subject: Legal Notices
Attachments: Owyhee County Ads - Cover Letter.RTF; 02-10416 Ad.RTF; 55-13893 Ad.RTF; 55-13887 Ad.RTF; 55-13888 Ad.RTF; 55-13889 Ad.RTF; 55-13891 Ad.RTF; 55-13892 Ad.RTF

Attached please find (7) legal notices being submitted for publication. Please contact me if you have any questions or if you are not able to run the ads on the dates listed.

Thank You,

Denise Buffington
Administrative Assistant
Dept of Water Resources
Western Region

2/27/2009

February 26, 2009

Legal Notice Department
OWYHEE AVALANCHE
PO BOX 97
HOMEDALE ID 83628

RE: Application for Permit No. 2-10416, 55-13887, 55-13888, 55-13889, 55-13891, 55-13892
AND 55-13893

Dear LEGAL NOTICE DEPARTMENT:

Enclosed you will find a legal notice which we wish to have published in your newspaper on the dates indicated (once a week for two consecutive weekly issues). If you cannot publish the notice on the proposed dates, please contact us immediately.

An affidavit of publication must be submitted to the Department along with the publication bill. Please send the affidavit and bill to this office before 03/23/2009. Your cooperation is appreciated.

Sincerely,

Denise Buffington
Administrative Assistant

The following application(s) have been filed to appropriate the public waters of the State of Idaho:

2-10416

GEM IRRIGATION DISTRICT
PO BOX 67
HOMEDALE ID 83628

Point(s) of Diversion NWSE S32 T04N R05W OWYHEE County Source SNAKE RIVER

Tributary To COLUMBIA RIVER

Use: IRRIGATION 03/01 To 11/15 30 CFS

Total Diversion: 30 CFS

Date Filed: 12/06/2007

Place Of Use: IRRIGATION

Remark: Place of use is the Gem Irrigation District service area.

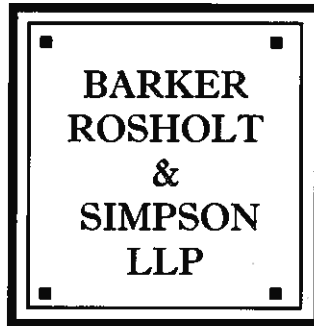
Permits will be subject to all prior water rights. Protests may be submitted based on the criteria of Sec 42-203A, Idaho Code.

Any protest against the approval of this application must be filed with the Director, Dept. of Water Resource, Western Region, 2735 Airport Wy, Boise ID 83705 together with a protest fee of \$25.00 for each application on or before 03/23/2009. The protestant must also send a copy of the protest to the applicant.

DAVID R. TUTHILL, JR., Director

Published on March 4th & 11th, 2009

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
PAUL L. ARRINGTON
SCOTT A. MAGNUSON



1010 W. Jefferson St., Suite 102
Post Office Box 2139
Boise, ID 83701-2139
(208) 336-0700 telephone
(208) 344-6034 facsimile
brs@idahowaters.com

113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

Albert P. Barker
apb@idahowaters.com

February 3, 2009

RECEIVED
FEB 04 2009
WATER RESOURCES
WESTERN REGION

Vicky Music
Sr. Water Resource Agent
Idaho Department of Water Resources
2735 Airport Way
Boise, ID 83705-5082

Re: Application for Permit 2-10416

Dear Vicky:

Thank you for your letter of January 30, 2009 questioning whether there were some clerical errors in the Application. You are correct. The point of diversion should be Township 4N Range 5W. I have made the changes on the attached copy of page 1 and am returning them to you for your signature. In addition to the information I provided in my letter to you of January 16, 2009 concerning this Application, I have determined that the historical information shows that the minimum stream flow measured at the Weiser gauge of 4750 cfs was not met on only six days since that minimum stream flow was established in 1976. There were two days in 1977 and four days in 1992, both extreme drought years, when that minimum stream flow right was not satisfied. Otherwise, Gem is unaware of any downstream water rights that might be affected by this Application. Gem is aware that this right would be junior to and subject to the minimum stream flow at Weiser.

Thank you for the opportunity to correct the record for this Application.

Very truly yours,

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

APB/se
Enclosure



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

January 30, 2009

Gem Irrigation District
c/o Al Barker
Barker Rosholt & Simpson
1010 W. Jefferson St., Ste. 102
Boise, ID 83702

Re: Application for Permit 2-10416

Dear Applicant:

There is an error in the application referenced above that must be corrected before processing can continue. As you see from the attached *Application For Permit*, Page 1, Item No. 3, the Location of the Point of diversion is incorrect. The Township is listed as "2N" (I think it is intended to be 4N) and the Range is identified as "SW". (I think it is intended to be 5W).

If the error is a clerical error, it can be corrected in one of the following ways:

- 1 - You can change the original page 1 in person at Western by lining out the errors, inserting the correct township and range, initialing and dating the original page 1;
 - 2 - You can direct me in writing to make the changes; or,
- You can make the changes as directed in no. 1 on the attached copy of page 1.

Thank you for your attention to this matter.

Sincerely,


Vicky Music
Sr. Water Resource Agent

Enclosure: *Copy of Application For Permit, 2-10416, page 1.*

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
SHELLEY M. DAVIS
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SCOTT A. MAGNUSON



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113 Main Avenue West, Suite 303
Twin Falls, ID 83301-6167
(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

FACSIMILE COVER SHEET

DATE: January 16, 2009

RE: Gem Irrigation
District Application for Permit 2-10416

TO: Vicky L. Music
Sr. Water Resource Agent
Idaho Department of Water Resources

FACSIMILE#: (208) 334-2348

FROM: Albert P. Barker

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 3

☒
☐
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Original will not be sent.
Original will be sent by first class mail
Original will be sent by Federal Express.

MESSAGE:

If you have any questions please contact us. Thank you.

CONFIDENTIALITY NOTICE - THE INFORMATION CONTAINED IN THIS FACSIMILE COMMUNICATION IS ATTORNEY/CLIENT PRIVILEGED AND/OR CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS COVER PAGE IS NOT THE INTENDED RECIPIENT, OR THE EMPLOYEE OR AGENT RESPONSIBLE TO DELIVER IT TO THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION OR THE INFORMATION CONTAINED HEREIN IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CALL (208) 336-0700, AND RETURN THIS FACSIMILE TO US AT THE ABOVE ADDRESS. WE APPRECIATE YOUR COOPERATION.

ALBERT P. BARKER
JOHN A. ROSHOLT
JOHN K. SIMPSON
TRAVIS L. THOMPSON
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(208) 733-0700 telephone
(208) 735-2444 facsimile
jar@idahowaters.com

Albert P. Barker
apb@idahowaters.com

January 16, 2009

VIA FACSIMILE

Vicky L. Music
Sr. Water Resource Agent
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705-5082
(208) 334-2348 fax

Re: Gem Irrigation District
Application for Permit 2-10416

Dear Ms. Music,

I am writing in response to your letter concerning the application for this permit, requesting information concerning the effect of Gem's application on existing water rights. In particular, you requested the Applicant's position concerning impact on downstream water rights, including the hydropower rights at the Hells Canyon Complex.

In the original Swan Falls decision, *Idaho Power v. State Department of Water Resources* 104 Idaho 575, 661 P 2d 741 (1983), the Idaho Supreme Court extensively reviewed the conditions in Idaho Power's Snake River licenses, including Swan Falls and the Hells Canyon Project. The argument in that case was that the Swan Falls hydropower rights were subordinated to future upstream depletion, in part, on the theory that the subordination clauses in the Hells Canyon licenses caused subordination of Swan Falls rights as well. The Supreme Court held that the Swan Falls rights were not subordinated. However, the Court held that the clause in the Hells Canyon rights which subordinated Idaho Power's Hells Canyon water rights to future upstream depletion was a valid condition as applied to the water rights at the Hells Canyon Project. This application is for diversion below Swan Falls and above Hells Canyon. This proposed right would not be subject to any of the complex dealings concerning the Swan Falls trust water. None of those Swan Falls issues are impacted by this application.

Gem Irrigation District has not extensively attempted to catalog all of the downstream rights on the Snake River. However, it is Gem's understanding that, other than the hydropower rights, such rights are very few, particularly those involving consumptive uses or withdrawals from the River.

The Idaho State Water Plan recognizes an average daily flow at the Weiser gage downstream of Marsing at 4750 cfs. The Idaho Water Resource Board holds a water right (#3-6) with a priority date of 12/29/1976 for minimum stream flow, year round, of 4750 cfs, measured at the Weiser gage. Gem understands that the water flow in the Snake River downstream of the Marsing plant and above the Weiser gage is generally far more than necessary to meet the minimum flow requirements at the Weiser gage. Gem is aware of only one drought year in which the minimum stream flow at Weiser gage was affected by low flow in the River. Obviously in those situations Gem would not be in the position to exercise its right under permit 2-10416.

Under these circumstances the Gem Irrigation District believes that there will be no impact on existing water rights. To the extent that there is an impact on the water available to Idaho Power at Hells Canyon this amount of water is fairly insignificant in the grand scheme of Hells Canyon water. More importantly, the Idaho Power water rights and FERC license both specifically contemplate that the "water right" is subordinate to future upstream diversion, exactly as contemplated by the Gem application here. See also Idaho Code §42-203 B.

If you have any additional questions concerning this application please direct them to me.

Very truly yours,

BARKER, ROEHOLT & SIMPSON LLP



Albert P. Barker

APB/jcm
cc: Gem Irrigation District



State of Idaho

DEPARTMENT OF WATER RESOURCES

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PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

October 16, 2008

Gem Irrigation District
c/o Al Barker
Barker Rosholt & Simpson
1010 W. Jefferson St., Ste. 102
Boise, ID 83702

Re: Application for Permit 2-10416

Dear Applicant:

The recent application for permit you submitted on behalf of your client, Gem Irrigation District, regarding Snake River for supplemental irrigation is being processed. To assist this office in completing the initial processing steps, please submit additional information required by I. C. § 42-203A(5)(a-e) for "large diversion projects." This requirement includes the following items discussed in Water Appropriation Rule 40, Rule Subsections 040.05c through 040.05g:

1. effect on existing water rights
2. sufficiency of water supply
3. good faith, delay or speculative purposes
4. financial resources
5. local public interest.

Your client need only address item 1, relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, which reads as follows:

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

In particular, IDWR seeks information regarding the impact on downstream water rights, such as the hydropower rights in the Hells Canyon complex.

Please submit the requested information to allow final evaluation of your application to be completed. You may seek additional time to provide the information by making a written request to interrupt processing for up to six months. Your response or a request for more time to

Page 2
October 16, 2008
2-10414

seek the information must be received by January 16, 2009. The application will be voided without a timely written reply.

Please contact me at 208-334-2190 if you need more information. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Vicky L Music". The signature is stylized with a large, looped "V" and a cursive "L".

Vicky L Music
Sr. Water Resource Agent