

Weaver, Mathew

From: Norm Young [nyoung@erresources.com]
Sent: Monday, February 02, 2009 11:16 AM
To: Weaver, Mathew
Cc: Christopher James
Subject: Re: FirstFruits Draft License

Mat:

Thank you for the opportunity to review the draft license. Christopher James and I greatly appreciate your spending the extra time and effort to produce a workable and fair document.

Just a few suggestions and questions:

1. The 0.8 af diversion volume limitation at the top of the first page should be noted as relating only to the storage volume. Otherwise, the license could be read to limit use of the water right at the authorized 0.2 cfs rate for flow through the pond to only 2 days each year.
2. Add to the first item on Page 1 that Proof of Beneficial Use was submitted August 30, 2007.
3. Add to Condition of Approval No. 5 a line totaling the mitigation requirement; i.e., 0.04 cfs and 0.20 acres.
4. Condition of Approval No. 10 requiring fish screens is an addition to the permit requirements. Has Fish and Game ordered fish screens and fish passage requirements for diversions from Garden Creek? If not, does the inclusion of this condition put a requirement on Mr. James in excess of that for other water users?
5. You and I discussed last week the possibility of including a condition of approval recognizing the possibility of a future approval by IDWR to mitigate using the spring south of the creek or some other source of water added to the creek to allow diversion through the pond to continue when the irrigation rights are not in priority. Your draft conditions do not seem to preclude this possibility, so it seems that this use could occur if a permit or transfer is approved in the future allowing this mitigation. I still hope to convince you and Shelley that the pending application from the spring has merit based upon the offered mitigation and the futile call principle. In this regard, note that permit No. 72-16624 issued at the same time as permit No. 72-16625 is from a ground water source and was processed and approved based upon mitigation equivalent to that offered in the mitigation plan filed in this matter. If the flow from the spring is not reaching the creek, but is tributary to ground water, mitigation by foregoing irrigation of an equivalent acreage under other rights has been found to be approvable. Because the annual depletion from the pond has been mitigated, the diversion from the spring to the creek to protect prior rights does not represent an additional depletion (a non-consumptive use).

Again, thank you for the time and consideration you have given to this matter, and we look forward to a final license being issued.

Norm

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

From: Weaver, Mathew
To: nyoung@erresources.com
Sent: Friday, January 30, 2009 10:06 AM
Subject: FirstFruits Draft License

Norm per our discussion find attached a draft final license for permit 72-16625. This license has yet to receive feedback from Shelley, but following our two hour discussion of this permit yesterday I don't think anything

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should catch him by surprise.

Thanks for your help on this and have a great weekend.

Mat Weaver, PE
Staff Engineer
Idaho Department of Water Resource
(208) 287-4914

<<Draft Lic 72-16625.pdf>>