



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. Skyline Dr., Suite A • Idaho Falls, Idaho 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Web Site: www.idwr.idaho.gov

EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

February 25, 2009

McFarland Livestock Co Inc
C/O Tex Kauer
PO Box 50
Lemhi ID 83465

RE: Application to Appropriate Water 74-15907

Dear Applicant:

IDAHO DEPARTMENT OF WATER RESOURCES

Applying for a Permit to Appropriate Water in the Salmon and Clearwater River Basins

Idaho Code § 42-203A(5) requires IDWR to evaluate the following criteria for applications to appropriate water:

- The potential to reduce the quantity of water under existing water rights
- The sufficiency of the water supply for the proposed appropriation
- The good faith nature of the application
- The adequacy of the applicant's financial resources
- The local public interest in the public water resource
- The conservation of water resources in Idaho
- Impacts to the economy of the local area or watershed

To ensure that IDWR has sufficient information to evaluate the criteria, Rule 40.05 of the Water Appropriation Rules (IDAPA 37.03.08.040.05) requires water right applicants to submit additional information to IDWR in connection with their applications.

The additional information requirement is usually waived for applications proposing the appropriation of 5.0 cfs or less or the storage of 500 af or less. Because the waters of the Salmon River and Clearwater River drainages are habitat for fish species listed as endangered or threatened under the federal Endangered Species Act, caution is necessary to ensure that new appropriations of water do not undermine efforts to protect and restore the ESA listed fish species and other public values in the basins' rivers and streams. IDWR is, therefore, requiring that applicants submit the additional information required by Water Appropriation Rules 40.05.c through 40.05.g, even when the applications are for less than the usual 5.0 cfs/500 af threshold. Only certain applications for small domestic and stockwater uses and applications to divert ground water for domestic use in multiple homes are exempt from the additional information requirement. A copy of Water Appropriation Rules 40.05.c-g is printed on the back of this page.

Please submit the information required by Water Appropriation Rules 40.05.c-g to IDWR within 30 days from the date you are notified that it is required. IDWR will hold your application until you have submitted the additional information. If you believe that a particular piece of information is not relevant to your application, please explain why. If you do not respond within 30 days, IDWR may void your application. If you need additional time to submit the required information, please submit a written request. IDWR can grant additional time "upon a showing of good cause."

The following are agency representatives who will help you respond to the local public interest requirement of Rule 40.05.g. Please contact these agency representatives at least 15 days prior to the end of your 30-day response period.

IDFG contact list for water right applications:

Panhandle Region: Mary Terra-Berns at 208-769-1414
Clearwater Region: Ray Hennekey at 208-799-5010
McCall Subregion: Dale Allen at 208-634-8137
Southwest Region: Eric Leitzinger at 208-465-8465
Salmon Region: Tom Curet at 208-756-2271

IDEQ contact list for water right applications:

Lewiston: Kerby Cole at 208-769-4370 (Clearwater or lower Salmon River basins)
Cascade: Leslie Freeman at 208-382-6808 (South Fork Salmon River basin)
Idaho Falls: Troy Saffle at 528-2650 (Upper Salmon, Lemhi, Pahsimeroi basins)

Water Appropriation Rules 40.05.c through 40.05.g

c. The following information shall be submitted for applications to appropriate unappropriated water. . . .

Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:

- i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.
- ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.
- 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.

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

- i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:

The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.

If you have any questions, please feel to call our office.

Sincerely,



Sharla Cox
Administrative Assistant

Enclosure