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IDAHO DEPARTMENT OF FISH AND GAME

PANHANDLE REGION
2885 West Kathleen Avenue
Coeur d'Alene, Idaho 83815

C.L. "Butch" Otter/Governor
Cal Groen/Director

October 17, 2008

Mr. Keith Franklin
Idaho Department of Water Resources
Northern Region
7600 Mineral Drive, Ste 100
Coeur d'Alene, ID 83815

Dear Keith:

REFERENCE: FOLLOW UP – CARPENTER (95-9513) & MORSS (95-9515)

We have reviewed your follow up letters (both dated October 8, 2008) for Carpenter and Morss.

Morss (95-9515). After reviewing all the relevant information, it appears that the project described in the application from Anthony and Jeann Morss will not be detrimental to fish, thus we have no objection to issuance of this water right.

Carpenter (95-9513). This application indicates that the applicant applied to create an in-stream pond; however, your October 8, letter indicates that the pond already exists. Therefore, it appears that the pond was constructed illegally and applicant did not have a stream alteration permit to place material in Cable Creek, or a water right for storage. Additionally, we searched the IDWR website for descriptions of "wildlife storage" and "recreation storage," but could not find descriptions for these uses. Our understanding of recreational storage is not compatible with what is described in your letter. We would appreciate it if you could provide us with the criteria for "wildlife" and "recreation" storage.

If a person is allowed to construct a dam on a stream it must be passable by both up and downstream migrating fish.

Section 36 (706), Idaho Code, states that "no person shall establish and maintain a pond on premises owned or leased by him and obtain, possess, propagate and process for his own personal pleasure and use any fish approved by the Commission, unless he has first obtained a permit from the Director of the Idaho Department of Fish and Game." **One of the stipulations that must be met before a permit may be issued by the Director is that the pond is not constructed in or across a natural stream bed containing wild fish**, except when it has been determined by the Commission that the water flow and volume of wildlife concerned in such proposed private pond are not a significant part of the wildlife resource of the State.

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Requirements to obtain a permit include the following.

- **Pond construction may not be in or across any natural streambed, lake, or other watercourse containing wild fish, except when determined by the Commission that the water flow and volume of wildlife concerned in the proposed pond are not a significant part of the wildlife resource of the state.** *(The applicant and IDWR have indicated that wild fish inhabit Cable Creek at the project location.)*
- The pond must be located entirely on private property owned or leased by the applicant.
- **Any dam constructed to divert water into the pond must meet all requirements in Section 36-906(a), Idaho Code.**
- All inlets to the pond must be screened at the point of diversion (screen mesh size should be 0.25 inches; intake approach velocities should not exceed 0.5 ft/second) as provided in Section 36-906(b), Idaho Code, to prevent the entrance of wild fish into the pond.
- The permit application is made using the form provided by the Department, which provides information required by the Director.
- The pond shall be posted in three (3) separate conspicuous places and all entrance roads.

You indicate in your letter that the applicant will use plastic and railroad ties to construct the dam; we believe these materials are likely to create a fish migration barrier, thus violating Idaho Code. Rock weirs, logs and rootwads can create more natural holding pools that provide benefits for fish and other aquatic species as well as allow fish passage. Additionally, there is no risk of a dam failure, which can cause damage to downstream aquatic and riparian habitat.

We are willing to meet with the applicant to discuss the project and potential alternatives. If you have questions concerning our comments please call us at 769-1414.

Thank you for your attention to this matter.

Sincerely,



Charles E. "Chip" Corsi
Regional Supervisor

CEC:MTB

C: Sharon Kiefer, IDFG Boise
COE, CdA