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RECEIVED
NOV 28 2008
DEPARTMENT OF
WATER RESOURCES

November 25, 2008

VIA EMAIL AND REGULAR MAIL

Jeff Peppersack
Chief, Water Allocation Bureau
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
jeff.peppersack@idwr.idaho.gov

RE: Additional Information with Regards to Permit No. 22-7114, in the Name of Northwest Farm Credit Services and Steveco Canyon Farms, Inc. (Now Owned by Skyline Farms, LLC).

Dear Jeff:

In September of this year, you entered an order withdrawing a preliminary order which voided Permit No. 22-7114. The voiding of the permit was based upon the Department's decision to rely on Water District 01 records from the late 70s and early 1980s, rather than rely on a field examination performed by IDWR staff in 2008. We previously submitted a number of legal arguments supporting our contention that the field exam should have been relied upon in our Petition for Reconsideration, and do not intend to repeat those arguments here, but nevertheless incorporate them here.

In your order withdrawing the Preliminary Order, you indicated that we had sixty (60) days to submit additional information for IDWR's consideration. My clients were tied up with potato harvest for most of October, but have recently delivered to me some files from the former owner which contain a number of water right documents related to Permit No. 22-7114 and other water issues. Unfortunately, as to Permit No. 22-7114, the documents contained in this file are also found in the Department's file which they have scanned and placed on the Internet. Consequently, we simply do not have any additional evidence of what the system was capable of diverting as of the date Proof of Beneficial Use was submitted other than what we have previously submitted. It seems that my clients were relying upon correspondence from the Department at that time that development of the Permit would be verified with the field examination, and did not seek to independently verify the pumping capacity of their pumps.

We did prepare an email to Tony Olenichak of Water District 01 to have him discuss generally how Water District records were historically kept, and requested that he provide his comments as to whether or not these records would be reliable in the licensing of a water right permit. A copy of the email I received from Mr. Olenichak was sent to Aaron Marshall of your office, but I am enclosing a copy of his email with this letter for your consideration. As contained in Mr. Olenichak's email, it appears that the methodology used to compile Water District 01 daily records is an entirely different standard than that typically performed in a beneficial use field examination. For example, Mr. Olenichak indicates that the daily records were compiled based on a once a month totalizer. Therefore, a measurement of the instantaneous diversion rate cannot be extrapolated from that information. Additionally, Mr. Olenichak notes that generally the diversion rate was calculated based on a volume diversion as recorded by the Deputy Watermaster. As noted in Mr. Olenichak's email, in his example, if the Deputy Watermaster read a monthly volume pumped at 200 acre feet recorded on a totalizer, and the pump operated had recorded that he pumped ten days during the month, the Water District would show that the pump diverted 10 cfs on average for each of the ten days of the month that were recorded as on. Again, this methodology does not measure or incorporate an instantaneous diversion rate.

In short, we have significant concerns with the Department relying upon data that was really intended to be for a purpose other than measuring an instantaneous diversion rate necessary for completion of a beneficial use field exam. Therefore, in addition to the legal arguments we raised previously in our Petition for Reconsideration, there are a number of practical and factual deficiencies with the Water District 01 data, and we therefore request the Department rely upon the results from the beneficial use field examination recently conducted.

In your letter dated September 18, 2008, you said you would review the file and take appropriate action once we had an opportunity to provide additional information. We diligently sought for any other information that might indicate what the pumps were capable of diverting in 1980, but have not found anything comparable to a beneficial use field examination. Based upon the language in your letter, you indicated that once you review the above information, you would take appropriate action to issue a license, issue a license with conditions, or void the permit. We will therefore wait to hear from you concerning Department action on this matter. We appreciate in advance your consideration of the information we have provided, and would certainly be happy to answer any questions you might have.

Best Regards,

Robert L. Harris

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HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.

Enclosure
c: Skyline Farms, LLC

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Rob Harris

From: Robert Harris [robertlynnharris@hotmail.com]
Sent: Tuesday, November 18, 2008 8:43 AM
To: rharris@holdenlegal.com
Subject: FW: Watermaster Records for Water Right No. 22-7114

Subject: RE: Watermaster Records for Water Right No. 22-7114
Date: Mon, 17 Nov 2008 10:18:40 -0700
From: Tony.Olenichak@idwr.idaho.gov
To: robertlynnharris@hotmail.com
CC: Dave.Carlson@idwr.idaho.gov; Aaron.Marshall@idwr.idaho.gov

Rob,

The 8/4/08 correspondence from Aaron Marshall to Stevco Canyon Farms concerning Permit 22-7114 said, "The greatest diversion rate during the authorized development period, 1975 to 1980, was 10.0 cfs in 1978." The daily diversion records attached to the letter were from the Water District #1 data for the 1978, 1979, and 1980 seasons published in Water District #1's annual Watermaster Reports (black books).

There are a few things to consider when using the old Water District #1 daily records for remotely located pumps such as the Stevco Canyon Farms pump:

- The daily records are compiled based on a once-a-month totalizer reading of the pump's Macrometer flowmeter (read once a month by the Deputy Watermaster) and monthly pump cards (if submitted) from the pump operator at the end of the year.
- The pump operators are asked to submit a daily record with the hours pumped and the average flow-rate pumped for each day of the month. At the minimum, they are asked to indicate which days of the month their pump diversion was "on". These days "on" are then compared to the monthly volume diverted and recorded by the Deputy Watermaster, and then the monthly volume is averaged over those days listed as "on" by the pump owner.
- The daily diversion flow-rates listed on the Water District #1 records are not listings of maximum instantaneous flow-rates, but averages for a 24-hour, weekly, or monthly period. For example, if the Deputy Watermaster read a monthly volume pumped of 200 acre-feet recorded on the Macrometer totalizer, and the pump operator reported that he had pumped 10 days during the month, the Water District #1 records would show the pump diverted 10 cfs (on average) for each of those ten days of the month that were reported as "on".
- If the Macrometer flowmeter was broken, it was the Deputy Watermaster's responsibility to estimate either the daily flow-rate and/or the monthly volume pumped.

Water District #1 no longer has the raw data (monthly pump readings and pump cards submitted by the pump owner) for the years 1978-1980, so I can't tell you precisely how the daily records for those years were compiled for the Stevco Canyon pumps. However, it appears to me that in 1978 either the daily flow rate was estimated as 10 cfs for the days reported as "on", or the monthly totalizer readings were averaged over the days reported as "on" during the 1978 season. For 1979, it appears a daily averaging was done for shorter time periods during the month. In 1980, it appears averaging was done over the entire season.

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From: Robert Harris [mailto:robertlynnharris@hotmail.com]
Sent: Friday, November 14, 2008 8:12 AM
To: Olenichak, Tony; rharris@holdenlegal.com
Subject: Watermaster Records for Water Right No. 22-7114

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