

File 23-11333

Peppersack, Jeff

From: Rob Harris [rharris@holdenlegal.com]
Sent: Monday, November 10, 2008 9:21 AM
To: Peppersack, Jeff
Cc: TomMeSum@aol.com
Subject: Petition for Reconsideration - Water Right No. 23-11333.
Attachments: DOC111008.pdf

Jeff:

Attached is a petition for reconsideration for the order licensing Water Right No. 23-11333. As contained in the petition, we request that IDWR amend Condition No. 4 to avoid any potential confusion regarding the condition. If you have any questions, please let me know.

Thanks,

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11/10/2008

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Attorney for Tom Summers

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 23-11333 IN THE
NAME OF TOM SUMMERS

PETITION FOR RECONSIDERATION

Tom Summers, by and through his counsel, Robert L. Harris of Holden, Kidwell, Hahn and Crapo, PLLC, hereby petitions the Idaho Department of Water Resources ("IDWR") to reconsider the issuance of an amended license for Water Right No. 22-11333.

The basis for this petition is not to amend any of the elements of the water right, but only seeks to have Condition No. 4 revised to clarify any potential confusion with regards to this condition. Condition No. 4 currently reads as follows:

When water is diverted under this right during times when flows in Little Pine Creek reach Antelope Creek, the right holder shall rent storage water in the amount of 0.4 acre-feet per day for release by the watermaster into the beginning of the Irwin to

Heise Reach of the Snake River, except when the 10/12/2005 priority is being filled on the Snake River or excess water is being spilled past Milner Dam as determined by the watermaster of Water District No. 01. Rental of storage water is required to mitigate for depletion of river flow resulting from diversion of Little Pine Creek; if rental water is unavailable for mitigation, the watermaster shall curtail diversion of water under this right during times when mitigation is required. The right holder shall not divert flows from Little Pine Creek or otherwise prevent flows of Little Pine Creek from reaching Antelope Creek except under an authorized water right.

As we understand this condition, mitigation is only required when surface water from Little Pine Creek actually flows into Antelope Creek and Mr. Summers is diverting water pursuant to Water Right No. 22-11333. In other words, there must be a continuous flowing surface water connection between Little Pine Creek and Antelope Creek such that surface water must be flowing into Antelope Creek. When surface water from Little Pine Creek is no longer flowing into Antelope Creek, mitigation is not necessary.

In order to ensure that both IDWR and Mr. Summers are clear on the meaning of the above condition, we ask IDWR to reconsider the wording of the above condition and amend the condition as follows (with changes in bold and underline):

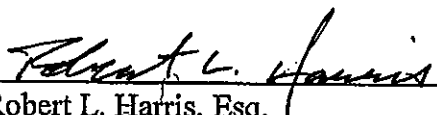
When surface water is diverted under this right during times when surface flows in Little Pine Creek reach Antelope Creek such that there is continuous flowing surface water connection between Little Pine Creek and Antelope Creek, the right holder shall rent storage water in the amount of 0.4 acre-feet per day for release by the watermaster into the beginning of the Irwin to Heise Reach of the Snake River, except when the 10/12/2005 priority is being filled on the Snake River or excess water is being spilled past Milner Dam as determined by the watermaster of Water District No. 01. Mitigation is not necessary when surface water from Little Pine Creek is not running into Antelope Creek such that the two creeks are not connected. At times when the two creeks are connected, rental of storage water is required to mitigate for depletion of river flow resulting from diversion of Little Pine Creek; if rental water is unavailable for mitigation, the watermaster shall curtail diversion of water under this right during times when mitigation is required. The right holder shall not divert flows from Little Pine Creek or otherwise prevent flows of Little Pine Creek from reaching Antelope Creek except under an authorized water right.

The above changes would clarify that mitigation is only necessary when there is a surface water connection between Antelope Creek and Little Pine Creek, which we presume was the original intent of the condition. It is unclear at this point what the hydrogeologic connectivity is beneath the surface in the regional aquifer in this area, and therefore, it must be made clear that the connection referenced in the above condition is a surface connection only, and not a hydrogeologic underground connection.

To the extent the original condition requires that an underground hydrogeologic condition be considered, we ask that it be amended as we have suggested to only consider a surface water connection. Otherwise, this would place an undue burden upon Mr. Summers to perform a hydrogeologic analysis every year before he could divert water under this water right. For these reasons, we request that the amended condition be included in the license of Water Right No. 23-11333.

DATED this 16th day of November, 2008.

HOLDEN, KIDWELL, HAHN & CRAPO, PLLC


Robert L. Harris, Esq.
Attorney for Tom Summers

CERTIFICATE OF SERVICE

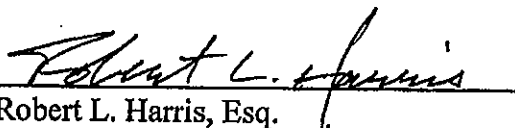
I hereby certify that I served a copy of the following described pleading or document on the attorneys listed below by hand delivering, by mailing, by email, or by facsimile, with the correct postage thereon, on this 16th day of November, 2008.

DOCUMENT SERVED: PETITION FOR RECONSIDERATION

ATTORNEYS AND/OR INDIVIDUALS SERVED:

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(☐) *Hand Delivery*
(☐) *Facsimile*
(☐) *Overnight Mail*
(☒) *Email*


Robert L. Harris, Esq.
Holden, Kidwell, Hahn & Crapo, PLLC

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