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SEP 28 2006

DEPARTMENT OF
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September 26, 2006

Shelley W. Keen
Water Rights Supervisor
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: Application for Permit No. 35-13542 (South Interchange Properties, LLC)

Dear Mr. Keen:

We are writing this letter to propose a mitigation plan with respect to the above referenced Application for Permit. While we have grave concerns regarding the legality of (1) the use of the transfer tool in connection with an application for permit, and (2) the use of a newer version of the transfer tool without any documented authority for such, we reserve those legal issues and will not comment on them for the purposes of this proposal.

In your letter of April 11, 2006, you focused on the possible use of a portion of Water Right No. 35-7206D for mitigation and indicated 45 acres would need to be dried up to provide sufficient mitigation for the projected negative impacts on the Ashton to Rexburg and Heise to Shelley reaches. Our client would prefer to explore a different alternative.

As we understand the spreadsheets generated in application of the transfer tool, there is a predicted negative impact on the Ashton to Rexburg reach of the Henry's Fork (per the new version of the transfer tool) of up to 5.8 acre feet per trimester by the Spring of 2061, and of up to 4.6 acre feet in the Heise to Shelley reach of the South Fork of the Snake River per trimester by the winter of 2035, or a total yearly amount of 13.8 acre feet by the winter of 2041. Assuming those to be the predicted impacts, our client proposes to address each independently with water rights other than 35-7206D.

First, with respect to the Ashton to Rexburg reach of the Henry's Fork, applicant controls an ownership interest in land near Ashton, Idaho, on a small tributary to the Henry's Fork called

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Water Rights Supervisor
Idaho Department of Water Resources
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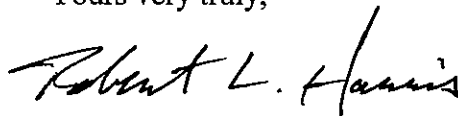
Blue Creek. There is 141.2 acres of irrigated land to which 3 water rights have been recommended as appurtenant, 21-2012, 21-2034 and 21-7148. As we understand it, this land is located in an area where the "Consumptive Irrigation Requirement, Field Headgate Requirement and Season of Use" map shows a field headgate requirement of 3.0 acre feet per acre. Applicant proposes to dry up enough of the irrigated acres under the three referenced rights to permit the resulting non-diversions from Blue Creek to flow into Henry's Fork to offset the model predicted depletions in the Ashton to Rexburg reach of Henry's Fork from the pumping of the well under 35-13542. If we concede that amount will reach 5.8 acre feet per trimester by 2061, that would be 17.4 acre feet per year by that time. By ceasing to irrigate up to 5.8 acres of the land, diversions from Blue Creek will be reduced by at least three acre feet per acre or up to 17.4 acre feet per year. Applicant proposes to do the drying up of acreage, beginning with 0.4 acres, the first year, and reach 5.8 acres in 2061 or 2062, as shown on the spreadsheet.

Second, with respect to the Heise to Shelley reach of the South Fork, Applicant controls an ownership interest in 130 shares of stock in Palisades Water Users, Inc. Each share represents 1 acre foot of storage space in Palisades Reservoir. Although the amount of actual water available in any given season depends on the percentage of fill, and there were seasons during the 2000 to 2005 drouth period when the reservoir filled only a portion of the space, there has never been a time when there was not significantly more water accruing to the space represented by these 130 shares than would be needed to provide mitigation for the predicted negative impact on the South Fork of Snake River in the Heise to Shelley reach. So, applicant proposes to commit sufficient water from this storage right each season to mitigate the predicted negative impacts as shown on the spreadsheet. That appears to be 2.5 acre feet the first year, increasing up to 13.8 acre feet per year, beginning in about 2041 or 2042.

We will undoubtedly need your direction on exactly how IDWR wants these proposals to be implemented and monitored. The applicant is certainly willing to comply with any reasonable proof and reporting requirements.

We will look forward to hearing further from you.

Yours very truly,



~~for~~ Kent W. Foster

File name: Permit 35-13542-V2b.xls

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Edited 072406

Compiled for the review of application for permit no.35-13542. Application proposes to divert groundwater from a new well for commercial and industrial use, and to offset impacts to the immediate reach on the Snake River by discharging water directly into the river near the place of use through the Shelley Sewage Treatment Plant.

This run includes the diversion from the new well (To Well), and additional mitigation offered from a ground water right in another location (From Well). Without mitigation from the ground water right, there appear to be impacts to other reaches upstream of Milner and upstream of the point of recharge. Direct recharge into the Snake River will not address the impacts of the new diversion to upstream reaches. The direct recharge is not considered in this run, however, it is assumed the recharge will compensate for the impacts to the Shelley to Near Blackfoot reach.

To Well: 140 acre-feet or 46.7 af/trimester of ground water from the new or proposed well (volume was based on the amount requested by applicant).

From Well (ground water): Diversion from the new well affected reaches upstream of Milner. This run reflects the impacts of 45 acres designated for mitigation. Only the consumptive volume is considered for mitigation purposes and is assumed to be 135 acre-feet (45 af/trimester) based on department standards. Again, it is assumed the impacts to the Shelley to Near Blackfoot reach will be mitigated from the water discharged at the treatment plant.

This model run was used only to determine whether mitigation is necessary to offset the consumptive portion of the proposed new use and the impacts to other reaches on the Snake River. This run was provided Kent Foster and Rob Harris, attorney's for the applicant, for information purposes. Though impacts to all reaches other than the Shelley to Near Blackfoot reach are in compliance based on the data reflected in this run, the applicant may provide an alternative mitigation plan.

Jeff Peppersack, Shelley Keen and Cynthia Bridge Clark discussed the results of this model run with Kent Foster and Rob Harris on July 24, 2006.

File name: Permit 35-13542-V2c.xls

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This run evaluates whether the mitigation described in run "Permit 35-13542-V2b" (45 acres offered from an existing ground water right at an alternate location) will account for impacts of the consumptive portion of the proposed ground water diversion (applicant estimated 7.4 acre feet of the total 140.7 acre feet to be diverted would be fully consumptive).

To Well: The application for permit, the applicant indicates approximately 7.4 af (2.5 af/trimester) of the total proposed diversion volume (140.7 af) will not be returned to the river through the treatment plant.

From Well (ground water): As reflected in model run "Permit 35-13542-V2b", the From Well reflects the impacts of 45 acres designated for mitigation.