



State of Idaho

DEPARTMENT OF WATER RESOURCES

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October 12, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

KENT FOSTER
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS, ID 83405

Re: Application for Permit 35-13542 – South Interchange Properties, LLC

Dear Mr. Foster:

The Department has received your letter dated August 21, 2007 regarding the Department's review of the application for South Interchange Properties, LLC. I have been asked to respond to your letter on behalf of the Director.

As I understand it, the application proposes to divert 0.2 cfs and 140 af from a ground water source a few miles north of Shelley for commercial/industrial purposes. The majority of the diversion volume is proposed to be returned to the Snake River after treatment through the Shelley Sewage Treatment Plant and only about 7.4 af will be consumed in the manufacturing process.

I understand that you and Rob Harris have been working primarily with Shelley Keen of this office to finalize a mitigation plan to compensate for effects to reaches of the Snake River. Although only 7.4 af will be consumed through the process, ESPA modeling has indicated that there will be effects to reaches of the Snake River that are upstream of Shelley to near Blackfoot reach, where treated water will be returned to the river. In a letter dated September 26, 2006, you proposed to mitigate those effects by discontinuing use of some acres under rights 21-2012, 21-2034 and 21-7148 and also by committing storage water from Palisades Water Users, Inc. Through continued discussion, the details of the proposed mitigation plan were being finalized and the Department was preparing a draft permit with conditions.

During final review, some items have been identified that will need to be addressed. The rights in Basin 21, from Blue Creek were reviewed for their adequacy for use as mitigation. Staff from our Eastern Region office have indicated that the rights are generally cut in April each year. The Department will need additional information to support the use of those rights, or alternate rights, as adequate mitigation for the effects in the Ashton to Rexburg reach of the river.

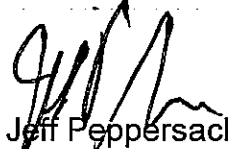
Mr. Foster
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The second item that will be necessary is documentation of ownership or authorization to use the mitigation rights and acknowledgement by the owner that the official record will be changed by the Department to reflect the mitigation use. Documentation of ownership or authorization and a plan for releases from storage and accounting will also be necessary to ensure that mitigation through storage releases is accomplished each year.

In prior letters, you have referred to drying up 80 acres of farmland under the New Sweden Irrigation District system as a means of mitigation for the application. The concept may be an alternative to mitigate for effects in the Heise to Shelley reach; however, ownership or authorization to reduce diversion and commit the right(s) to mitigation and acknowledgement by the owner that the official record will be changed to reflect the mitigation use would be necessary to ensure that mitigation can be properly accounted for.

I hope this letter provides answers to your questions regarding status of the application. If you have additional questions regarding this matter, please feel free to contact me at 208-287-4948.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Peppersack', is written over a horizontal dotted line.

Jeff Peppersack, Chief
Water Allocation Bureau