



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

September 30, 2008

DAVID R. TUTHILL, JR.
Director

TOM SUMMERS JR
5055 JUPITER HILLS DR
IDAHO FALLS, ID 83401

Re: License 23-11333

Dear Mr. Summers:

The Department has reviewed your license referenced above and considered further the mitigation requirements through discussion with staff and results of the Director's recent field visit to the Little Pine Creek area. The Department is willing to accept the alternate condition proposed in your May 15, 2008 letter, with some revision.

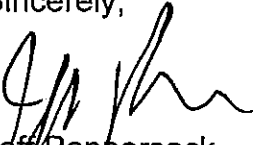
New appropriations for consumptive uses of water in the area are required to mitigate or show that the use would not injure other rights. There are extenuating circumstances related to your license 23-11333 that warrant further consideration of that requirement. Although right 23-2071 was disallowed in the SRBA, the right did represent development and use of water for irrigation purposes prior to moratoriums issued in the early 1990's. Your application for right 23-11333 was intended to replace right 23-2071 rather than litigate the recommendation for its disallowal in the SRBA. Ron Carlson has confirmed through correspondence that he recommended filing the application to allow continued irrigation without further penalty. The Director's field visit confirmed that flows in Little Pine Creek likely provide insignificant contributions to Antelope Creek or the Snake River in most years. However, based on review of aerial photography from past years it appears that, in some years, flows in Little Pine Creek could contribute to flows in Antelope Creek and/or ground water tributary to the Snake River. With that understanding, the Department proposes the following condition:

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.

Please let me know if this revised condition is acceptable. If so, the Department will issue an amended license for 23-11333 with the revised condition.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Peppersack', written over the printed name.

Jeff Peppersack
Chief, Water Allocation Bureau

cc: Eastern Region, IDWR