



IDAHO DEPARTMENT OF FISH AND GAME

CLEARWATER REGION

3316 16th Street
Lewiston, Idaho 83501

C.L. "Butch" Otter / Governor
Cal Groen / Director

March 7, 2007

Darrel Stuckey
1700 River Drive
Jackson, WY 83001

RECEIVED
MAR 13 2007
IDWR/North

Dear Mr. Stuckey:

REFERENCE: APPLICATION FOR A WATER RIGHT APPROPRIATION ON MILL CREEK,
IDAHO COUNTY

Subsequent to a telephone conversation February 14, Ray Hennekey, Region 2 Environmental Staff Biologist, reviewed your draft application to appropriate water from Mill Creek, tributary to the South Fork Clearwater River. You have proposed to repair a pre-existing, but not functioning dam and excavate fill from a remnant pond behind the dam that has filled in at some time or over the years with sediment. Mill Creek has re-established a channel through the sediment fill/old pond site. There was no water right for the old impoundment. Photos we have viewed of the site indicate that at least portions of the old pond currently support a wetland. The proposed pond would store approximately 5 acre feet; water stored in the pond would be used for irrigation, stock water, and recreation.

Idaho Fish and Game can not support your request for a water right on Mill Creek as proposed.

IDFG routinely recommends against construction of ponds in the stream channels. We are particularly concerned about a proposal to construct (or restore) a pond on Mill Creek.

Small perennial and even intermittent streams serve many important biological functions that deserve protection, and ponds more often than not adversely impact those functions. An in-stream impoundment is likely to contribute to elevated stream temperatures, may impede migrations of fish, amphibians and other wildlife and have other potentially adverse impacts on biota, flow, water quality and stream hydrologic function.

We believe that building (or restoring) a pond on Mill Creek is very likely to cause many of the adverse impacts cited above. In addition, building the pond would likely result in some loss of wetland habitat, which is scarce in the project area.

Our primary concern, however, is with the potential of the pond to increase water temperatures in Mill Creek. There is currently an EPA approved Total Maximum Daily Load (TMDL) on Mill Creek for temperature pollutants. The temperature TMDL reflects the fact Mill Creek currently does not provide temperatures needed to support designated beneficial uses. It is reasonable to assume that both increased water surface area and potential reductions of flow resulting from construction of a pond in the stream channel would contribute to increased water temperatures in Mill Creek. Not only would any increase in temperature exacerbate adverse effects on biota but, because of the temperature TMDL, it is our

understanding that any increase in temperature would be a violation of Idaho water quality standards. We recommend that you confirm with the Idaho Department of Environmental Quality.

IDFG would reconsider your request for construction (restoration) of the pond if you can provide sufficient information to demonstrate that the pond (1) will not raise stream temperatures above cold water standards, and (2) that the pond is designed so that sufficient stream flows will be maintained below the dam to support biota, water quality and hydrologic functions.

As a point of information, we also wish to make you aware that any structure intended to impound water in a stream must be designed, installed and maintained to allow fish passage per Idaho Code 36-906. IDFG would be pleased to work with you to ensure that fish passage is maintained. We would also be pleased to discuss potential alternatives to pond construction that will help protect stream habitat and meet your needs.

Finally, we note that you plan to use recreational storage for fishing. Although your application does not indicate an intention to stock fish, we want to inform you that a permit is required prior to stocking private ponds with fish. In addition, unless the fish to be stocked are delivered by a commercial hatchery (required for trout), the applicant must acquire a fish transport permit to bring fish to the pond. Both permits are available from Idaho Department of Fish and Game, at our Lewiston office.

Thanks for the opportunity to review your proposal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ray Hennekey', written over a horizontal line.

Ray Hennekey
Acting Clearwater Regional Supervisor

RH/ss

c: Tracey Trent
Mr. Keith Franklin