



State of Idaho

DEPARTMENT OF WATER RESOURCES

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July 23, 2008

C. L. "BUTCH" OTTER
Governor

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 acknowledges receipt of your letter dated May 15, 2008 to the Director regarding the water right referenced above. I've been asked to respond on behalf of the Director.

In your letter you raised concerns regarding the Snake River Basin Adjudication (SRBA) court's decision to disallow right 23-2071. Please note that if you disagree with the court's decree, you must file a motion with the court to set aside or amend the decree. The court will decide if a change is warranted. The Department does not have authority to change the decree and must recognize right 23-2071 as disallowed.

The permit for 23-11333, issued in 2005, included a condition of approval requiring rental of storage water to mitigate for depletion of river flows. The mitigation requirement has been a condition of approval for new permits for consumptive uses since moratorium orders were issued in the Snake River area in the early 1990's. In a letter dated May 5, 2008, the Director indicated that you could submit an alternate proposal for mitigation or show that injury will not occur. The Director specifically noted that any alternate proposal must consider and address the interconnection between surface and ground water in the area.

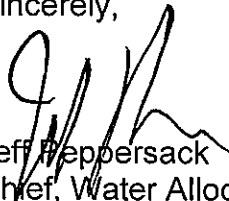
In your letter, you proposed that the condition be changed to require rental of storage water only during times when Little Pine Creek flows to the Snake River. Your proposal does not consider nor address the interconnection between surface and ground water in the area. Depletion of water from Little Pine Creek will reduce water available to downstream senior right holders, even if the water would otherwise sink, because that water would become unavailable as surface water or ground water tributary to the Snake River.

Mr. Summers
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Please note that the Department is willing to consider other proposals. Diversion and use of the water under right 23-11333 must comply with existing conditions of the license unless the Department approves an alternate plan.

If you have any questions, please feel free to contact the Department.

Sincerely,



Jeff Peppersack
Chief, Water Allocation Bureau

cc: Eastern Region, IDWR