



State of Idaho

DEPARTMENT OF WATER RESOURCES

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June 11, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

RACINE OLSON NYE BUDGE & BAILEY
C/O SCOTT SMITH
201 E CENTER ST
PO BOX 1391
POCATELLO ID 83204-1391

RE: Petition for Reconsideration of Preliminary
Order in the Matter of Permit No. 11-7342

Dear Mr. Smith:

The Department has received your Petition for Reconsideration of the Preliminary Order Voiding Permit No. 11-7342. In response, the Department has issued the enclosed order withdrawing the Preliminary Order issued on May 15, 2008.

Recent correspondence relating to this permit indicates that there are some misconceptions on how permits graduate to a license status. The process of filing for a new appropriation of a water right includes many steps that the permit holder must comply with in order to obtain a water right license. Once a permit is issued, there is a development period in which the construction of the diversion works is to be completed and beneficial use is to be established, as specified in the permit. In this case, there was a five year development period, which ended in April 1, 1989. Idaho Code § 42-217 provides that there must be a statement of Proof of Beneficial Use filed with the Department by the date specified on the permit. In this case, the Proof of Beneficial Use was filed with the Department late, however, the Department accepted the statement and the priority date was advanced accordingly, as provided in Idaho Code §42-218A. When Proof of Beneficial Use is filed, the next step is for the Department or a certified water right examiner to conduct a field examination to confirm the beneficial use developed in connection with the permit. The water use that takes place during the development period is what the Department assesses during a field exam and is how a permit is evaluated for denial or approval into a water right license.

In addition, there appears to have been either a miscommunication or a misunderstanding regarding the activity that occurred during the authorized development period, consequently Permit No. 11-7342 was recommended for denial. When the Department inquired about development under the permit in 2007, the Department was informed that beneficial use of water was not established until after the authorized development period.

The Department has reviewed Steven Wuthrich's affidavit concerning the construction of the diversion works that occurred during the authorized development period and will be able to use that information to review the permit for licensing.

The Department cannot issue a license without knowing the flow rate and volume of water used within the authorized development period, therefore, the affidavit will need to be augmented with information regarding the diversion works system, pipe sizes, historic flow rates in the creek, and any other pertinent information relating to activity that occurred during the authorized development period. The additional information must also be sufficient to confirm the water use, such as a description and number of irrigated acres and the times in which the land was occupied with individuals and stock using water from the system. Any additional documentation such as billing, receipts, contracts, etc. that could support Mr. Wuthrich's statements should also be submitted. This is the permit holder's opportunity to provide the Department with the most complete picture of the water use that occurred prior to April 1, 1989.

Lastly, water right permits are personal property that must be assigned from one owner to another. Because the statutory filing fee of \$25 for an Assignment of Permit has not been paid, the permit remains in the name of Utah Process Agency Inc. Once the Department receives the required fee, the permit record will be updated to reflect the current owners.

Because the Department cannot license a permit without confirming the extent of beneficial use established during the authorized development period, we will hold any action on your permit to allow you time to submit the necessary information. If the Department does not receive the necessary information **within 30 days** we will reinstate the Preliminary Order Voiding Permit. If 30 days is not enough time to gather the information requested in this letter, please request additional time in writing.

If you have any questions regarding this matter, you may contact me directly at (208)287-4944, by letter or e-mail at cherie.padilla@idwr.idaho.gov, and I will be happy to assist you.

Sincerely,



Cherie Padilla, Water Resource Agent
Water Allocation Bureau

cc: Utah Process Agency Inc.
c/o Stephany Wuthrich
214 Canyon Rd
Montpelier ID 83254

John and Julie Franson
1349 Homestead Ln
Soda Springs ID 83276