



State of Idaho

DEPARTMENT OF WATER RESOURCES

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June 19, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

JOHN AND JULIE FRANSON
1349 HOMESTEAD LN
SODA SPRINGS ID 83276

RE: Permit 11-7342

Dear Mr. and Mrs. Franson:

I received your email and feel that you may be frustrated by the licensing process. I understand that frustration, the more time that elapses from when the diversion structure is constructed and put to use, the more difficult it becomes to understand it, making it extremely difficult to license a permit.

I want to address all the questions that you posed in your email at this time and hope that the information I provide helps you in moving towards attaining a water right license.

1. This is getting expensive.

I realize this has not been an easy process and I regret that a field examination was not conducted many years ago when the original structure was in place. This would have made licensing the permit much simpler.

2. It seems like a lot of fuss regarding a single home and domestic use. We have never, nor do we plan, to irrigate pasture or cultivated land or raise stock. Somewhere you (or Scott?) mention "1/2 acre" as acceptable for a new home, and that is, as best I can tell, about what we have.

The permit specifies that 5 acres of irrigation would be developed, so if you were to provide adequate documentation for 5 acres irrigated during the development period, we could license for that amount. If you are not interested in pursuing irrigation of more than 1/2 acre, you'll only need to provide documentation for 1/2 acre.

3. Is your main objection that no proper field examination was done 19+ years ago?

You are correct when you state that no field examination was done 19+ years ago. It would have been ideal if a field examination was conducted when the original diversion structure was in place, since that is what we base the license on.

4. If so, IDWR will have to realize that the documentation still available may not be as complete and precise as it would have been at the time. The original farmer is now dead. His son-in-law (Wuthrich) has pieced together the evidence as best he can.

I have read Mr. Wuthrich's affidavit and it was very helpful in supporting the development of the permit. The permit was reinstated based on the affidavit indicating some development, but we need additional information to determine the actual extent of development so we can issue a license for that amount.

5. If a field exam had been done properly at the time, and, for example, IDWR wanted a pipe an inch bigger, or smaller, would the owner be allowed to make that change, or would the permit have been automatically voided? Where does that leave us now?

Permits do not become automatically voided. Permits can and will be voided if water is not put to beneficial use. In this case, it sounds like water was put to beneficial use within the authorized development period, so the Department needs to know the quantity of water that was diverted within the authorized development period and for what uses. You are allowed to change the diversion works associated with a permit, so long as it remains in compliance with the permit.

6. You mention "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". Inquired of whom? Informed by whom?

Mrs. Franson met with Cindy Bird 4/3/2007 at the Soda Springs office. At that time, Cindy was informed that you and she had developed the spring and installed a cistern. This development occurred after the authorized development period and that is why the recommendation to void the permit was made. The Department was unaware of any previous development until reviewing Mr. Wuthrich's affidavit.

7. You ask about "historic flow rates in the creek". Homestead Spring is not a creek but a spring that surfaces and disappears on our property. The flow rate is consistently 10 gpm from winter until August, when it slows to 7 gpm. Fall rate varies based on precipitation.

Thank you for the information on Homestead Spring.

8. You ask for the original pipe size. I remember a pipe that looked about 3" when we built the house, but I didn't measure it (why would I?).

The pipe being 3" is a helpful piece of information, but it does not give the complete picture of the original diversion works system. We need to confirm the actual amount of water diverted and used for the beneficial purposes permitted.

9. You ask for "the number of irrigated acres...and...times the land was occupied with individuals and stock". Please refer to the Wuthrich affidavit (#6,7,8,9,10,11, and 16). I think Steven wrote that up pretty well.

I agree that the affidavit was well written and informative. In his affidavit, Mr. Wuthrich states that in 1985 the diversion system was removed, but a pipe and valve continued to be used. Who used the pipe and valve system? Were the sheepherders and other groups still occupying the land up until 1989 and using the pipe and valve for water? How many and when? The affidavit indicated that the occupation of the sheepherders and other groups occurred prior to 1984-1985. The affidavit also recognizes that irrigation took place, but does not specify what piece of ground was irrigated. Perhaps CRP records will provide the actual irrigated acres.

10. If you require it, I hope we can tease more information out of Steve Wuthrich, although I fear he may grow weary at some point. You ask for "billing" -- of what? "Receipts" -- of what? "Contracts" - - with whom, regarding what?

The reason we need additional information is so you can get this permit licensed. There may be other documentation that would confirm the extent of beneficial use established, such as receipts or contracts that substantiate the construction of the diversion works; this is typically what other individuals in your situation submit. What the Department needs to know is the quantity of water being diverted and for what purpose between 4/1984 and 4/1989 (the authorized development period) so we can license the permit according to what had been developed.

11. Was proof of beneficial use accepted in 1989 by IDWR?

The proof of beneficial use was accepted by the Department. This does not confirm the extent of beneficial use.

12. Did Cindy Bird do a field examination?

Cindy Bird did not do a field examination. She made her recommendations based on what Mrs. Franson had said regarding the spring not being developed until you folks had moved onto the property.

Please note that this permit is still in the name of Utah Process Agency Inc. and will remain in their name until the \$25 filing fee is received.

I look forward to receiving any additional information that you collect in regards to permit 11-7342. Please let me know if you have any other questions. You can reach me at (208) 287-4944 or by email at cherie.padilla@idwr.idaho.gov.

Sincerely,



Cherie Padilla, Agent
Water Allocation Bureau

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