



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 13, 2005

DAVID SHAW
ERO RESOURCES CORP
3314 GRACE ST
BOISE ID 83703

Re: Application for Permit No. 63-32185, Roswell Marsh Wildlife Habitat Area

Dear Dave:

The Idaho Fish and Game Commission submitted an application for permit to appropriate ground water for wildlife purposes for the above referenced site. The application included a staff cover letter and instructions to contact you should questions arise. Therefore I am contacting you regarding unresolved application issues.

Storage water rights for existing ponds are not found for this site. It is not clear if the application is associated with existing or proposed ponds. For existing ponds, does the applicant only seek a permit for "maintenance water" from a ground water source? Should this include a storage component or not? Should the existing ponds also require water right coverage? For proposed ponds, would shallow ground water also be used to fill and/or maintain the ponds? An application for 6.0 cfs for proposed ponds covering about 80 acres should require storage components (diversion to storage etc.).

In any event, the application proposes a consumptive use of ground water within the Boise River drainage (Basin 63). This would occur for ground water exposed to evaporation during the irrigation season. The enclosed "pond evaporation map" suggests about 300 acre-feet of annual evaporation from ponds covering about 80 acres.

As you know, many new consumptive uses from Basin 63 ground water cannot be approved unless mitigation offsets consumptive use. Furthermore, mitigation based on an existing water right represented by a claim in the Snake River Basin Adjudication (SRBA) presents short-term processing problems. Under those circumstances, the "mitigation right" cannot be properly evaluated until the SRBA objection period has been completed. I am not aware of other approvable methods to mitigate a new consumptive use except to use a mitigation right not subject to a pending SRBA objection period.

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The application should not be processed without a mitigation plan unless it can be shown that the proposed use is non-consumptive. A few other items remain to be addressed if it can be shown that the application should be processed. These items include the following:

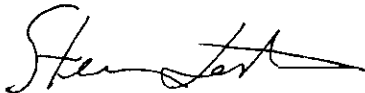
1. a completed "request to process" form should be submitted (see enclosed);
2. the proposed water bearing zone should be identified;
3. information regarding "large diversion analysis" should be submitted (see enclosed);
4. the well drilling permit fee upgrade should be paid for the well identified under tag number 0031214 (\$125 to upgrade from \$75 to \$200).

Assuming the consumptive use issue is adequately addressed, items 1 and 2 are needed before processing can continue ("pre-advertising"). Items 3 and 4 would not delay initial processing but would be needed before processing could be completed ("post-advertising").

The application will be held in the "Basin 63 processing delay hold" until that hold is modified or until additional information shows the application should be processed. Delays related to department decisions do not affect the proposed priority of an application. A response is not necessary at this time unless you want to address consumptive use issues for processing to continue.

The department will keep you informed of any changes to the local processing delay. Please let me know if you need additional information in this regard.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosure

POND EVAPORATION MAP

Estimating AF loss from evaporation from
Storage Surface Area (consumptive use or Refill)

- 1) pond surface area (acres)
- 2) inches/year evap. loss (nearest fit on map)
- 3) convert inches to feet (divide by 12)
- 4) AF Loss = Feet x Acres

Example Pond covers 5 acres NW Ada County
loss = 42"/year (between 40 & 45 lines)
AF Loss = $\frac{42}{12} \times 5 = 17.5$ AF

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Assume:

80 acres

45" yr.

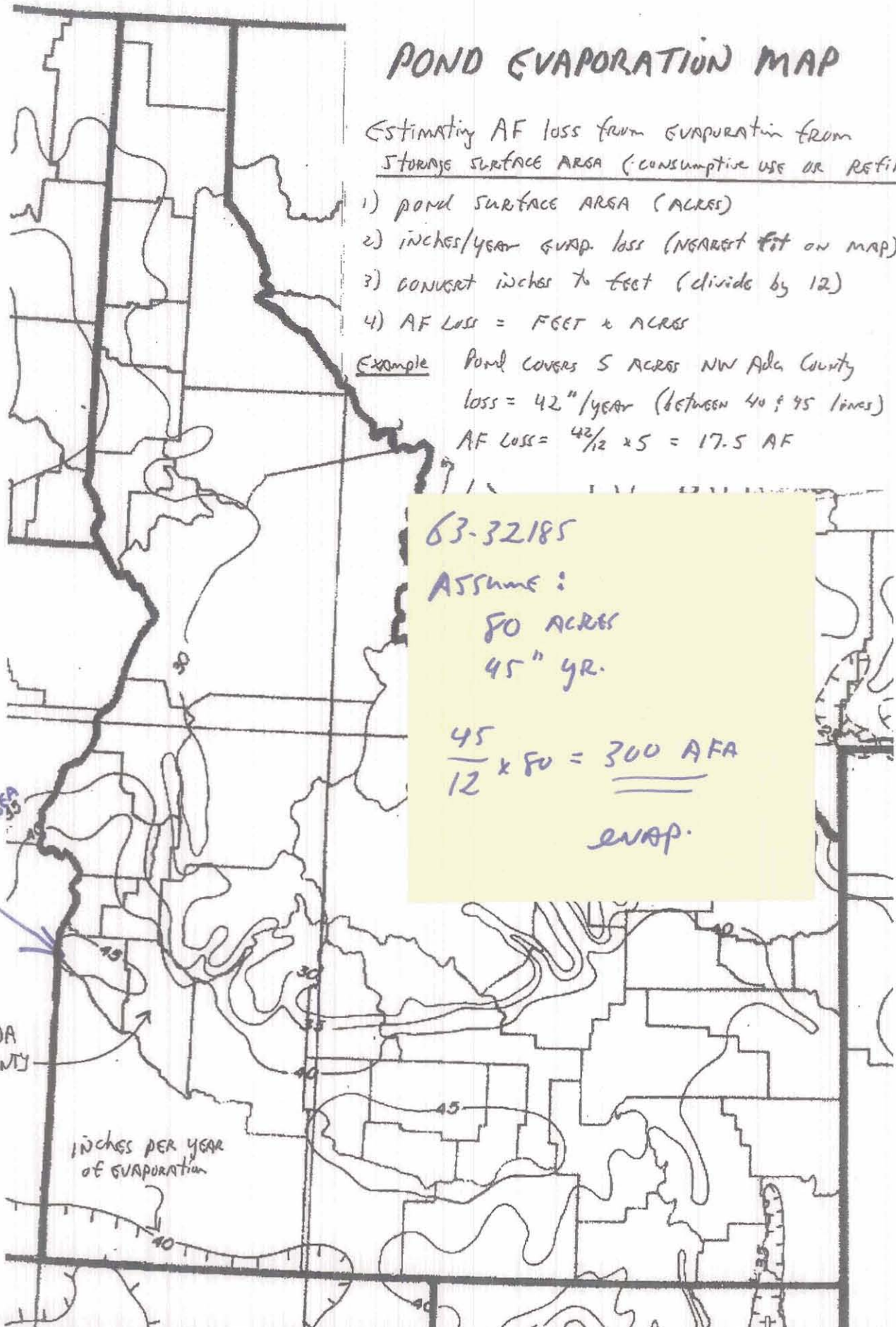
$$\frac{45}{12} \times 80 = \underline{\underline{300 \text{ AFA}}}$$

evap.

Refill Area

ADA
COUNTY

INCHES PER YEAR
OF EVAPORATION



criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear the initial burden of coming forward with evidence for those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant. (7-1-93)

iii. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated. (7-1-93)

c. The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A, Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code. (7-1-93)

d. For unprotested applications or permits to be reprocessed, the director will evaluate the application, information submitted pursuant to Rule Subsection 040.05.c. and information in the files and records of the department, and the results of any studies the department may conduct to determine compliance with the appropriate criteria. (7-1-93)

e. In protested matters the director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record. (7-1-93)

05. Additional Information Requirements. (7-1-93)

a. For unprotested applications and permits being reprocessed, the additional information required by Rule Subsection 040.05.c. shall be submitted within thirty (30) days after the director notifies the applicant that the application or permit is being reviewed for decision. The director may extend the time within which to submit the information upon request by the applicant and upon a showing of good cause. Failure to submit the required information within the time period allowed will be cause for the director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. The director will provide opportunity for hearing as provided in Section 42-1701A, Idaho Code. (7-1-93)

b. For protested applications or protested permits being reprocessed, the information required by Rule Subsection 040.05.c. may be requested by the director to be submitted within thirty (30) days after notification by the director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures. Failure to submit the required information within the time period allowed will be cause for the director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. (7-1-93)

* (c) The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre-feet (500 AF) or less and for filings seeking reallocation of trust water which the director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows: (7-1-93)

i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted. (7-1-93)

(ii) For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.

* if > 5 cfs
> 500 AF storage

> 200 ACRES irrigation
> 2 AF/day reduction AT
Murphy gauge

(7-1-93)

(iii.) Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights. (7-1-93)

(d.) Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows: (7-1-93)

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. (7-1-93)

ii.) Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source. (7-1-93)

(e.) Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows: (7-1-93)

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code. (7-1-93)

ii.) The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials. (7-1-93)

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows: (7-1-93)

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed. (7-1-93)

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications. (7-1-93)

(g.) Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director. (7-1-93)

h. The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The director may request any or all of the following information for any filing seeking the reallocation of trust water. (7-1-93)

* please send cc of letter seeking comments to IOWE to document this was done