



United States
Department of
Agriculture

Forest
Service

Idaho Panhandle
National Forests

St. Joe Ranger District
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File Code: 1950/2540/2700

Date: March 28, 2008

Sheila Cottier
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The Avery Water & Sewer District has filed an Application For Permit, [Water Right Number 91-7170], to drill a well and appropriate the public waters of the State of Idaho with the Idaho Department of Water Resources (IDWR). This application is to drill a new well in the NWNW Lot 5 of Section 14, T45N, R5E, to replace an existing well that has been shown to be contaminated. No water right is known to exist for the present well. The District proposes to drill an 8-inch well to a depth of 100 feet. A submersible pump with a capacity less than 0.5 CFS will be installed in the well. Our records show that this well location is on National Forest System (NFS) land.

The Avery Water & Sewer District has contacted me about this matter and is aware that the District must receive authorization for this use of NFS land from the USDA Forest Service. At the present time you are not authorized to occupy and use NFS land for this purpose. All occupancy and use of NFS land to construct and operate water diversion and transport facilities or to use water on NFS land must be authorized under 19 U.S.C. 551, 43 U.S.C. 1761, 36 CFR 251.50, and 36 CFR 261.10(a). Because you are not authorized to occupy and use NFS land for the purpose shown on your claim there is no ability to exercise the beneficial use stated in your application. To do so could be a violation of the laws and regulations cited above.

There are procedures and criteria that must be considered in this situation and include specific direction to deny proposals for use of NFS land which can reasonably be accommodated on non-NFS lands and not to authorize the use of NFS lands just because it affords the applicant a lower cost and less restrictive location when compared with non-NFS lands. An applicant must provide evidence and documentation including estimated costs, to the Forest Service of attempts and efforts to secure water on private land by other means, such as drilling a well, developing another source of water, or hauling water that does not involve NFS land. This needs to lead to the conclusion that there is no other reasonable source of water on private land. If other reasonable sources are not diligently sought, a special use authorization must be denied. This information is needed before any consideration of a special use authorization can begin.

I understand that Welch Comer & Associates, Inc. evaluated the existing water system and developed the following conclusions:

- The existing well demonstrates a rapid decline in quality due to bacteriological contamination.



- The existing well poses a public health threat.
- No amount of improvements to the existing well would bring it into compliance with the Safe Drinking Water Act and the Idaho Rules for Public Drinking Water Systems.
- A new water supply is needed to serve the Avery Water and Sewer District.
- A new well drilled on the east edge of the District's service area provides the best opportunity for a safe, reliable new source.

I also understand that two independent hydrogeologists have identified that the only suitable location for a new well is the highway median island between Forest Highway 50 and the Milwaukee Road. Even though this is within Shoshone County's highway right-of-way, the ownership is still National Forest System land. I believe that the water transmission main is also proposed to be constructed within the highway right-of-way along Forest Highway 50, which is National Forest land. There is an outstanding question in regards to the surface ownership upon which the water storage tank would be constructed too.

Preliminary information indicates that the District has evidence and documentation to support attempts and efforts to secure water on non-NFS lands. The environmental assessment conducted and prepared by the Panhandle Area Council evaluated alternatives to the use of NFS lands, provided public disclosure of the situation, alternatives to the proposed action, and identified mitigation associated with the coordination of this proposal with the appropriate regulatory agencies.

Your proposed use of NFS land must also be evaluated against two levels of screening criteria for special use authorization. This proposal, at this time, seems to meet these criteria and all policy requirements. The Forest Service also has a vested interest in this proposal, because we would like to incorporate our infrastructure into the new water distribution system. I will inform you when it would be appropriate for you to submit a formal application for the proposed occupancy and use of NFS land. It is during this formal application phase that it would be appropriate for an application for a water right permit to proceed, while a decision on the occupancy of NFS land is pending.

Please consider this information. If you have other information that would help me work through these issues please contact me at (208) 245-6001. I want to evaluate this matter with accurate facts and information.

Sincerely,



CHARLES A. MARK
District Ranger

cc: James Gebhardt, Thomas E Ball, Idaho Department of Water Resources, Shanda F Dekome