



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

May 7, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

SAMARIA WATER AND IRRIGATION COMPANY
ATTN DAVID REEL
5176 SOUTH 4400 WEST
MALAD CITY ID 83252

RE: The Seamons Water Permit No. 15-07285

Dear Sirs:

The Idaho Department of Water Resources (IDWR) recently issued Permit to Appropriate Water No. 15-07285 to Seth D. Seamons for the diversion of 3.60 cfs to irrigate 180 acres in Oneida County. I have enclosed a copy of the permit for you.

When reviewing the application, IDWR was concerned the proposed diversion would deplete the water available to fill Samaria Water and Irrigation Company's water rights from Warm Springs. IDWR staff members conversed several times with Mr. David Reel about the application. From your April 25, 2008, letter, IDWR understands you do not oppose issuance of the permit to Mr. Seamons and, furthermore, you recognize that once the new water use is established, you bear a greater burden of proof in establishing you have been injured by Seamons's use of ground water.

If, at some point in the future, Samaria asserts its senior-priority water rights and requests a delivery call as a recourse to potential injury, Samaria must initiate and employ the following process.

Regulation of junior ground water rights to protect senior surface water rights is governed by IDWR's *Rules for Conjunctive Management of Surface Water and Groundwater (IDAPA 37.03.11)*. When a senior water right holder (petitioner) claims material injury and makes a delivery call against a junior water right holder, the petitioner must supply the following documentation to DWR for review:

- A description of the petitioner's water rights.
- Names, addresses, and descriptions of all ground water rights that are alleged to be causing material injury.
- All information, measurements, data or study results available to the petitioner to support the claim of material injury.
- A description of the area having a common ground water supply within which petitioner desires junior-priority ground water diversion and use to be regulated.

A significant burden of proof is inherent in supplying the information outlined above. The petitioner must first establish that the petitioner's water rights and the water rights alleged to be causing injury are connected within an area having a common ground water supply. Rule 31 of the *Rules for Conjunctive Management of Surface Water and Groundwater* identifies those items specifically needed for consideration by IDWR in determining areas having a common groundwater supply. Typically, a comprehensive technical study consisting of data collection, analysis, and conclusions from a pump test or tests, aquifer modeling, or similar scientifically sound evaluation, designed and conducted by a qualified professional, such as a hydrologist, geologist, or engineer is required. Such a study

Samaria Water and Irrigation Company
May 7, 2008
Page 2

can require a major financial investment and can take a considerable amount of time to complete.

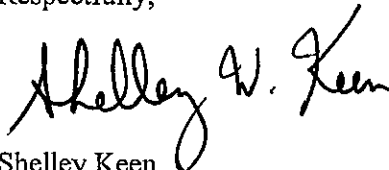
Next, in the event the petition proposes regulation of ground water rights from an area having a common ground water supply within which the water rights have not been adjudicated and for which a Water District does not already exist, the designation and establishment of a ground water management area pursuant to Section 42-233(b), Idaho Code, may be required prior to any resolution.

Finally, a historical record of measurement is required to substantiate a diminishment in water and therefore potential material injury. In the case of Samaria, proper measurement devices which "provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion", as required under the conditions of Samaria's Water Right Transfer 5276, have not been installed. The installation of such measuring devices and regular collection and recording of the measurement data would be necessary to establish a long term record of measurement through time and thus the evidence necessary to establish injury.

In summary, the outline of the procedures and requirements associated with making a "delivery call" are presented to Samaria in an effort to make you fully aware of the involved process, as well as to illustrate the substantial burden that transfers from the party responsible for injury to the party claiming injury by the issuance of a permit. In addition, it will be very difficult to protect your surface water rights from injury if you have not installed measuring devices and established a historical water measurement record. IDWR encourages Samaria to install a measuring device at Warm Springs as soon as possible.

Please contact us with any questions regarding these matters.

Respectfully,

A handwritten signature in black ink, appearing to read "Shelley W. Keen". The signature is fluid and cursive, with the first name "Shelley" being the most prominent part.

Shelley Keen
Water Right Permits Section

Cc: IDWR Eastern Region