



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

**C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director**

May 16, 2008

STEVEN R HANNULA PE
ERO RESOURCES CORP
3314 GRACE ST
BOISE ID 83703-5836

Re: Rocks Natural Idaho Spring Water, Water Right No. 63-7227

Dear Mr. Hannula:

I received your May 14, 2008 letter regarding the above referenced matter. I agree with your analysis. Use of water right no. 63-7227 for a bottled water operation in lieu of a tavern would be consistent with the water right assuming all other elements of the right remain unchanged. Additional water right approval of some sort would only be needed if the project grows beyond commercial use limits of this water right.

Correspondence on file with the Idaho Department of Water Resources, including your most recent letter and this response today, will be added to the file for water right no. 63-7227.

Please let me know if you need more information. Thank you for your good efforts to resolve water right issues for what sounds like a worthy project.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Lester', is written over a horizontal line.

Steve Lester
Water Rights Supervisor



ERO Resources Corp.
3314 Grace Street
Boise, ID 83703-5836
(208) 373-7983
Fax: 373-7985
Denver • Boise • Durango
www.eroresources.com
eroboise@eroresources.com

RECEIVED

MAY 15 2008

WATER RESOURCES
WESTERN REGION

May 14, 2008

Mr. Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RE: Rocks Natural Idaho Spring Water - Water Right 63-7227

Dear Mr. Lester,

In a letter to the Boise County Planning and Zoning Department dated March 14, 2008, you described certain concerns regarding water right 63-7227 and its inadequacy to authorize the bottling of water at that location. After consideration of your letter, Mr. West (applicant) realized that you may not be aware that the tavern mentioned in the subject water right was closed in preparation for the bottling facility. All of the water previously used at the tavern will be used to supply the bottling facility.

As we discussed on the telephone earlier in May, this observation is critical for determining the adequacy of water right 63-7227 for the bottling facility.

Also, your letter dated March 14, 2008 identifies historic consumptive use as a concern. Because the water right was decreed with 'commercial' as a nature of use, Mr. West should be allowed to use the water right up to the full diversion rate and annual diversion volume, without regard to consumptive use. An analogy is if a farmer owns an irrigation water right and changes from a low consumptive crop to a high consumptive crop. So long as the farmer operates within his diversion rate and annual volume, he is allowed to change crops.

Similarly, Mr. West is changing the operation from a tavern to a bottling facility. So long as he operates within the limits of the water right, he is in compliance, even if the bottling facility is 100 percent consumptive.

With this new information, Mr. West requests that Idaho Department of Water Resources provide a letter to the file that states that his water bottling facility fits within the commercial use as listed in 63-7227 to avoid future confusion.

Regards,

Steven R. Hannula



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**C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director**

April 10, 2008

BOISE COUNTY P & Z DEPT
PO BOX 1300
IDAHO CITY ID 83631

HAND-DELIVERY

Re: Rocks Natural Idaho Spring Water – Case #2008-04

Dear Sir or Ms.:

The Idaho Department of Water Resources (IDWR) provided comments on the above referenced matter on March 14. This letter provides additional comments for your consideration.

Mr. West recently secured temporary water right coverage for the proposed project. He accomplished this by obtaining a lease of storage water plus agreeing to idle a valid surface water irrigation right located upstream from the project site. These steps will provide adequate water right coverage while preventing injury to other water right owners in the Boise River system, including but not limited to Mores Creek.

He is also actively seeking permanent water right protection for the proposed project. IDWR will continue to work with him in that vein.

Therefore, I am pleased to inform you the concerns noted in my prior letter have been addressed. The proposed new use of water for bottling purposes enjoys water right coverage at this time. Please contact me at your convenience if you have any questions or concerns about this.

Sincerely,

Steve Lester
Water Rights Supervisor

Copy: Scott West (via hand-delivery)
Steven R. Hannula, P.E., ERO Resources Corp. (via fax)



ERO Resources Corp.
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APR 9 2008

WATER RESOURCES
WESTERN REGION

April 9, 2008

Mr. Steve Lester
Idaho Department of Water Resources
2735 Airport Way
Boise, Idaho 83705

RE: Rocks Water Company – Water Rights

Dear Mr. Lester,

Enclosed, please find an affidavit signed by Mr. Scott West, senior member of West Properties LLC, who is opening a water bottling facility on Mores Creek. The intent of the affidavit is to provide IDWR some assurance that a mitigation plan has been started to ensure that the new consumptive use on Mores Creek by the water bottling facility will not injure down stream water users. The bottling facility is scheduled to open in May 2008.

The major points of the statement are that West Properties LLC rented water from Water District 63 to provide mitigation for the storage water rights and the lower Boise River water users for the year 2008 and is prepared to repeat the effort in 2009 in the event the permanent water rights are not yet secured.

Also, to ensure Mores Creek water users are not injured, Mr. West states that he will forgo the irrigation of the 2 acre field at his property east of Idaho City, thus keeping the water in Mores Creek. Again, he is prepared to repeat this effort in 2009 if needed.

Mr. West's goal is to obtain permanent water rights as soon as possible and has already started that effort.

Mr. West is scheduled to be in front of the Boise County Planning and Zoning commission on April 17, 2008 (next Thursday) for a Conditional Use Permit hearing. The deadline for submitting evidence is April 10, 2008. If at all possible, could you provide a reply letter to the Boise County P&Z Commission indicating that IDWR is satisfied for 2008 and potentially in 2009 that the temporary water rights for the bottling facility are satisfactory. Mr. West is available to personally pick up your letter so that the letter can be submitted to the P&Z commission in a timely manner.

Regards,

Steven R. Hannula

AFFIDAVIT OF SCOTT WEST,

Member, West Properties, LLC

STATE OF IDAHO)
 :
COUNTY OF BOISE)

I, Scott West, the undersigned, having been duly sworn on an oath deposes and says:

1. I am currently the senior member of West Properties, LLC, located in the NESE Section 10, T4N, R4E, B.M., Boise County, along highway 21. The information contained in this statement is true to the best of my knowledge and belief.
2. I am the owner of the land in the NWNE Section 20, T6N, R6W, B.M., in Boise County east of Idaho City, except for two small parcels within the 40-acre quarter-quarter. The former owner of the property was Nonus and Rheba Tucker.
3. In preparation of opening a water bottling facility at a spring tributary to Mores Creek in the NE SE Section 10, T4N, R4E, B.M., Boise County, I am working toward obtaining a permanent commercial water right to authorize the consumptive use of water. The annual volume needed is 3.8 acre-feet to be used on a year-round basis.
4. The business is scheduled to open in May 2008, pending permits from Boise County. Only recently was it discovered that the existing commercial water right at the Rocks Lodge (a part of West Properties) is insufficient for the water bottling facility. Significant efforts are currently underway to secure a permanent water right.
5. Given the financial risk of not opening on time has forced me to keep the original timeline.
6. To open the business and yet comply with the Idaho Department of Water Resources requirements, I rented 4 acre-feet water from Water District 63 for the calendar year 2008. By renting water from Water District 63, my intent is

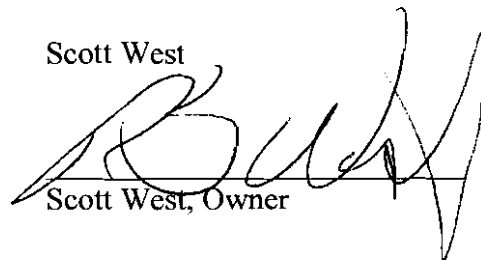
to protect the storage water rights in Lucky Peak and the Lower Boise River users during the irrigation season and the non-irrigation season.

7. I am prepared to rent again in 2009 if a permanent solution has not been secured.
8. Water right 63-2769 is appurtenant to the property I own east of Idaho City and authorizes the irrigation of 2 acres NWNE Section 20, T6N, R6E from Mores Creek, within my property. This water right was decreed in the Snake River Basin Adjudication.
9. To ensure that the downstream Mores Creek water users are not injured by the startup of my water bottling facility, I will forgo irrigating the 2 acres on the property east of Idaho City that is authorized by water right 63-2769. The intent is to keep the water in Mores Creek that would otherwise be diverted. The diversion volume associated with the 2 acres is 7 acre-feet and the consumptive volume is larger than the maximum capacity of the bottling facility (3.8 acre-feet).
10. I intend to work diligently in 2008 to secure permanent water rights for the bottling facility. However, in the event that the process continues into the year 2009, I will offer again to provide the same mitigation for the new use at the bottling facility.

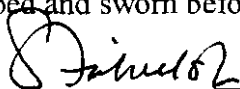
FURTHER YOUR AFFIANT SAITH NAUGHT

Dated this 9th day of April 2008

Scott West

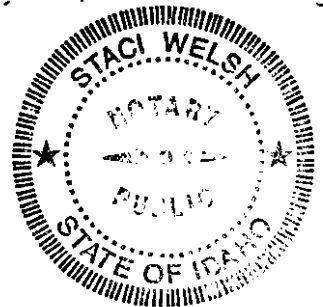

Scott West, Owner

Subscribed and sworn before me this 9th day of April 2008.



Notary Public
Residing at Meridian, Idaho

My commission expires 2/3/2011





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C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

March 14, 2008

BOISE COUNTY P & Z DEPT
PO BOX 1300
IDAHO CITY ID 83631

Re: Rocks Natural Idaho Spring Water – Case #2008-04

Dear Sir or Ms.:

The Idaho Department of Water Resources (IDWR) provides the following comments on the above referenced matter.

The proposal for a commercial bottled water facility presents water right challenges. The site in question is covered by water right no. 63-7227. That right includes a spring tributary to Mores Creek for up to 0.16 cfs (72 gpm). The water may be used for domestic use (4 units) and commercial use (1 tavern). These uses are essentially non-consumptive. Although the water right states that "domestic use shall not exceed 13,000 gallons per day," this does not mean that existing uses less than this limit would allow additional water to be used for a bottled water facility.

Use of the spring for consumptive use providing bottled water is not authorized under this right. The proposed use represents an enlargement of use not sanctioned by Idaho water law. Additional water right approval would be necessary for the proposed use to prevent an illegal diversion of water (IC §§ 42-351 and 42-1701B).

Tributary water in the Boise River system upstream from Star is considered fully appropriated. A new consumptive use water right from tributary water cannot be approved unless the new right is fully mitigated to prevent injury to senior water rights. An alternate strategy would be to transfer (change) an existing consumptive use right to cover the proposed project. A transferred right would have to derive from a surface water site upstream from Star.

By copy of this letter, IDWR advises the applicant to seek water right coverage as soon as possible because processing of water right proposals is somewhat backlogged due to workload issues. IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you need more information.

Sincerely,

Steve Lester
Water Rights Supervisor

Copy: Robert West, Rocks Natural Idaho Spring Water