



State of Idaho

DEPARTMENT OF WATER RESOURCES

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February 8, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

THOMAS J SUMMERS JR
5055 JUPITER HILLS DR
IDAHO FALLS, ID 83401

Re: License 23-11333

Dear Mr. Summers:

The Department has received your letter requesting removal of a condition of the license referenced above. You requested that the following condition be removed from the license.

Prior to diversion of water each year, the right holder shall obtain the expressed written certification of the Water District No. 01 watermaster that the right holder has rented and assigned stored water for release by the watermaster into the Snake River or a tributary to mitigate for depletion of river flow resulting from diversion of Little Pine Creek under this right. The amount of stored water required for mitigation shall be determined by the department based on the anticipated consumptive use for the year. Diversion and use of water without the written certification of the watermaster shall be a violation of Section 42-351, Idaho Code.

This condition was required under the permit to mitigate for the consumptive use associated with irrigation use. In 1993, a Moratorium Order was issued by the Department for the non-trust water area of the Snake River Basin that prohibited new appropriations of surface or ground water for consumptive uses. The moratorium order was issued to protect existing water rights and establish minimum stream flows. It is important to note that the surface and ground water sources are interconnected, so any consumptive use of water, even from a stream that sinks, will reduce the total water supply in the basin and ultimately reduce flows in the Snake River.

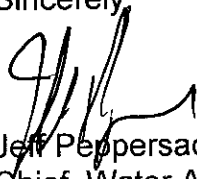
The water supply concerns that resulted in the moratorium order have not been alleviated, so new applications to appropriate water in the area must provide mitigation in order to be processed. Your permit was processed and approved on the basis that mitigation water would be provided. The mitigation requirement remains necessary in order to divert and use water under the developed water right.

Mr. Summers
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Your letter, received by the Department on January 15, 2008, cannot be considered as a petition for reconsideration, exception or brief because it was not filed timely. The license has become a final order of the Department. Nevertheless, the Department is willing to consider alternate mitigation plans that you may propose. Any plan must fully compensate for the consumptive use associated with your irrigation use under the license. Water cannot be diverted and used under the license without mitigation under the existing condition of the license or an alternate plan approved by the Department.

Please feel free to contact the Department if you have questions related to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Peppersack', is written over the printed name.

Jeff Peppersack
Chief, Water Allocation Bureau

cc: Eastern Region, IDWR