



State of Idaho

DEPARTMENT OF WATER RESOURCES

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May 21, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

K MERLE JEPPESEN
DALLIN JEPPESEN
132 S HIDDEN VALLEY RD
REXBURG ID 83440-3573

Gentlemen:

Enclosed is a copy of an executed Consent Agreement. Thank you for working with staff at the Eastern Region to craft the agreement. The consent agreement addresses several contentious issues raised during the 2006 irrigation season. As a result of the consent agreement, the Idaho Department of Water Resources ("Department" or "IDWR") will not pursue any enforcement action against you for possible unauthorized use of water during the 2006 irrigation season.

On page 2 of the agreement, sub-paragraph "5." states:

If filed by Jeppesens, IDWR will process licensing amendments for ground water permit nos. 22-7683 and 22-13671 that will propose adding lands as a place of use to the permits that were previously irrigated with Moody Creek water by Pivot #2. Following approval of the licensing amendments, all lands underneath Pivot #2 will be irrigated with ground water.

The Department has not yet received or reviewed the referenced applications to amend permits nos. 22-7683 and 22-13671. The Department cannot preapprove the applications, but must analyze the application using the criteria contained in Idaho Code § 42-211. Department staff will do their best to satisfy both the terms of the agreement and the Department's statutory responsibility.

Sincerely,

Gary Spackman
Administrator
Water Management Division

Encl.

cc: James Wood
Dr. George Brown
Jerry Rigby
Randy Budge
Joyce Edlefsen
Eastern Region, Attn: Ernie Carlsen
✓ Jeff Peppersack
Tim Luke

RECEIVED

MAY 04 2007

Department of Water Resources
Eastern Region

**CONSENT AGREEMENT AND ORDER FOR PENDING NOTICE OF
VIOLATION FOR MERLE AND JANICE JEPPESEN**

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DEPARTMENT OF
WATER RESOURCES

The following is a consent agreement between the Idaho Department of Water Resources (IDWR) and Merle Jeppesen, Janice Jeppesen, (other personal names and entity names), or any business holding water rights to irrigate property described by water right nos. 22-265 and 22-4195, hereafter referred to as "Jeppesens." The consent agreement is the result of earlier communications and a meeting held on January 11, 2007 at the IDWR office in Idaho Falls concerning the Pending Notice of Violation (PNOV) letter that was sent to you from Gary Spackman, dated December 28, 2006. The discussions/negotiations were intended to identify agreeable actions that would address the issues of the PNOV in an open and transparent manner and that would bear scrutiny from all interested parties.

Jeppesens agree to the following:

1. Jeppesens will file an application for exchange with IDWR proposing to divert water from Moody Creek in exchange for the delivery of storage water to the Teton River.
2. Jeppesens will identify the precise location of the 200 acres to be irrigated during the 2007 irrigation season with the Jeppesens' portion of Moody Creek water right 22-265. The acreage will be identified by public land survey description with the number of acres tabulated for each public land survey 40-acre tract and by a geographic information system map depicting the location and number of acres irrigated within each public land surveyed 40-acre parcel.
3. Jeppesens will install/maintain operable hour meters on all pivot irrigation systems.
4. Jeppesens will: (a) insure the existing meter measuring total flow diverted through Jeppesens' mainline will be operable at the beginning of the season; (b) calibrate the accuracy of the meter every year with an independent flow meter of known accuracy; and (c) maintain the existing meter on Jeppesens' mainline from Moody Creek in good working order during the irrigation season.
5. Jeppesens will close the mainline delivering Moody Creek water to Pivot #2 so that no water is deliverable from Moody Creek to Pivot #2 for the 2007 irrigation season. The mainline shall be closed with a lockable valve or by permanently placing an obstruction in the mainline to prevent water flow past the obstruction, referred to hereafter as "capping." Jeppesens shall notify the Department and the Watermaster of Water District 01 before commencement of the irrigation season whether a valve will be closed or whether the mainline will be capped. If the valve will be closed and locked,

the Watermaster of Water District 01 or a deputy (hereafter referred to as "the Watermaster" or "Water District personnel") must be present at the time the valve is closed and locked and the Watermaster shall be given sole possession of the key or combination to the lock.

IDWR and the Watermaster agree to the following:

1. IDWR will process the application for exchange as rapidly as reasonably possible, given other IDWR demands. Filing the application for exchange does not create any obligation on the part of IDWR to allow the physical exchange of water prior to IDWR approval of the application for exchange.

2. Water District personnel will visit the place of use for water right nos. 22-265 and 22-4195 at the beginning of the 2007 irrigation season for the express purpose of measuring the maximum flow rate at each pivot irrigation system with an ultrasonic flow measurement device. The maximum measured rate will be used with the hour meter data to calculate the annual volume used at each pivot irrigation location.

3. Water District personnel will visit the site periodically and without notice throughout the 2007 irrigation season to verify that:

- a. Hour meters and flow meters are working properly,
- b. Valves or other controlling device(s) are in their proper position,
- c. Places of use being irrigated at that moment are appropriate to the water right(s) and particularly water source.

4. The Watermaster will compare the 2007 annual volume diverted, as accumulated by the meter located in the main pipeline through which all Moody Creek water is diverted, to the combined annual volumes calculated from the hours of operation measured at each irrigation pivot location and the measured flows for each pivot. The Watermaster will reconcile any differences in the comparison, and will determine the total volume of Moody Creek water diverted pursuant to Jeppesen's portion of water right no. 22-265.

5. If filed by Jeppesens, IDWR will process licensing amendments for ground water permit nos. 22-7683 and 22-13671 that will propose adding lands as a place of use to the permits that were previously irrigated with Moody Creek water by Pivot #2. Following approval of the licensing amendments, all lands underneath Pivot #2 will be irrigated with ground water.

6. IDWR will not issue a notice of violation for Jeppesens activities during the 2006 irrigation season.

IDWR, the Watermaster, and Jeppesens agree:

Following the close of the 2007 irrigation season, IDWR, the Watermaster, and Jeppesens will evaluate the terms of the agreement to determine whether additional provisions need to be implemented for the following season.

Failure or refusal by Jeppesens to adhere to the terms of this agreement is grounds for IDWR to immediately issue a notice of violation under Idaho Code § 42-351, and to seek other remedies provided by law, including appropriate monetary penalties.

CONSENT

Jeppesens, IDWR, and the Watermaster acknowledges the facts set forth and accept fully the terms and conditions of this agreement. These terms shall become effective upon execution by the parties.

Signed this 18th day of May, 2007.. Gary Spackman

Dawn Jeppes 5-2-07
Jeppesens

Ernest Carlson 5-7-07
IDWR Representative

Lyle Swank 5/7/07
Watermaster, Water District 01

ORDER

IT IS HEREBY ORDERED that the parties to the Consent Agreement set forth above shall adhere to and comply with the terms and conditions of the Consent Agreement, and that the diversion and use of water under water right no. 22-265 is predicated upon compliance with the provisions of the Consent Agreement.

Dated this 18th day of May, 2007.

A handwritten signature in cursive script, reading "Gary Spackman", written over a horizontal line.

Gary Spackman
Acting Administrator