



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

March 2, 2007

GREG OBENDORF
C/O DANA HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

Re: Applications for Permit Nos. 51-12999, 51-13000 and 51-13001

Dear Applicant:

The Idaho Department of Water Resources (IDWR) requested additional information for the above referenced applications in April 2006. You provided a partial response in July 2006. IDWR now seeks the remaining information in this modified request as follows.

This request is based on Water Appropriation Rule 40.05, copy enclosed. Some of the information listed in Rule 40 is not necessary or was previously supplied as noted below.

First, a word about trust water processing. IDWR considers surface water described in the applications to be ultimately tributary to the Snake River despite your argument to the contrary ("no direct, continuous connection to the Snake River"). However, you provided credible information that each application, and all the applications when combined, will not reduce Snake River flow at the Murphy Gage by more than two acre-feet per day. The trust water challenge in this regard has been met.

Your previous letter provided good information addressing some but not all the points enumerated by IDWR's prior request. Please provide the following information pursuant to Water Appropriation Rule 40.05.

Rule 40, Item ci – information about other users, if any, along the same drain(s) was not provided.

Rule 40, Item ciii– describe the location(s) for return flows of surface water to the nearest ¼ ¼ of section location, describe how the proposed system will operate to minimize impacts on other water rights, if any, from the proposed source.

Greg Obendorf
March 2, 2007
Page 2

Rule 40, Item di— establish a credible link between the amount of water to be diverted and the specific beneficial uses to be developed. Exactly what beneficial use will be provided for wildlife? Determine why the requested amount of water is not speculative for the applications for permit. Your reply should be comprehensive, addressing why the amounts of water in the applications for permit plus the associated application for transfer are needed to provide the proposed beneficial uses.

The Owyhee County Commissioners expressed concerns in a June 2006 letter about possible activity beyond local zoning limitations. Please keep IDWR apprised of any local decisions in this regard to help determine if the proposed uses meet local public interest criteria.

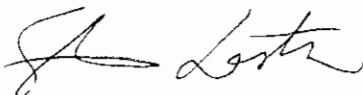
Any credible information that is provided should be attributed to the person or entity supplying the information. This should include verification that the person or entity is qualified to provide that information.

After receiving the additional information from you, IDWR will consult with other natural resource agencies to evaluate the information. Processing of the applications will continue after that step is completed.

The additional information should be provided within the next ninety (90) days. Alternately, you may request up to six months interruption in processing. The applications will be voided under IC § 42-204 without a timely written response.

Thank you for your attention to these matters. Please contact me at your convenience if you need more information.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Lester". The signature is fluid and cursive, with the first name "Steve" and last name "Lester" clearly distinguishable.

Steve Lester
Water Rights Supervisor

Enclosure: Copy of Applications
 IDWR Rule 40.05

Water Appropriation Rules 40.05.c through 40.05.g

c. The following information shall be submitted for applications to appropriate unappropriated water. . . .

Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:

- i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.
- ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.
- iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

- i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.
- ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

- i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.
- ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:

- i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.
- ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:

The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.