



United States
Department of
Agriculture

Forest
Service

Sawtooth National Forest
Supervisor's Office

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Twin Falls, ID. 83301
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File Code: 2540/5440

Date: August 10, 2007

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DEPT. OF WATER RESOURCES
SOUTHERN REGION

Jon and Wei Christianson
HC 64 Box 9958
Stanley, ID 83278

Dear Mr. and Mrs. Christianson,

It has come to our attention that you have filed Application for Permit Number 71-7170 with the Idaho Department of Water Resources, with the intention of diverting additional water from the Salmon River in the SENESE of Section 8, T8N, R14E. You identify in your application that the proposed point of diversion is on "US Government" land.

Although there are other water rights diverted from this location, please be aware that all occupancy and use of NFS land to construct and operate water diversion and transport facilities or to use water on NFS land is authorized under 19 U.S.C. 551, 43 U.S.C. 1761, 36 CFR 251.50, and 36 CFR 261.10(a). No authorization, or application for authorization, for the use and occupancy of these facilities on National Forest is on file in your name. While a special use authorization was granted to other land owners on the ditch many years ago, and applications for conditional easements have also been received, we have no documents that indicate your interest in the use of these facilities on public lands. Therefore, currently you are not authorized to occupy and use NFS land to appropriate water from the State of Idaho. As such, you have no ability to exercise the beneficial use stated in your application. To do so could be a violation of the laws and regulations cited above. This letter serves to notify you of the need to request and obtain the necessary authorization from the Forest Service.

Please find enclosed a brochure "Obtaining a Special Use Authorization with the Forest Service" which describes the basic proposal and application process. The procedures and criteria that must be considered in this situation include specific direction to deny proposals for use of NFS land which can reasonably be accommodated on non-NFS lands and not to authorize the use of NFS lands just because it affords the applicant a lower cost and less restrictive location when compared with non-NFS lands. You will have to provide evidence and documentation to the Forest Service including estimated costs of development and attempts and efforts to secure water on non-NFS land by other means such as drilling a well, pumping from the river, and developing another source of water that does not encumber NFS land. This needs to lead to the conclusion that there is no other reasonable source of water available. If other reasonable sources are not diligently sought, a special use authorization must be denied.

You would then have to identify the facilities and construction activities planned on NFS land in the form of a proposal. This proposal must be of sufficient detail that it can be evaluated against two levels of screening criteria and applicable policy. If your proposal meets these criteria and

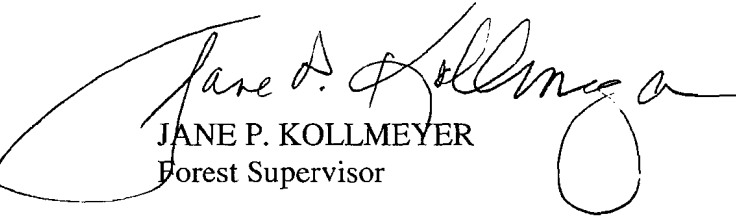


policy requirements you will then need to submit a formal application for the proposed occupancy and use of NFS land. Acceptance of an application does not guarantee issuance of an authorization. The project must then be assessed in accordance with applicable laws such as the National Environmental Policy Act, the Historic Preservation Act, and the Endangered Species Act. It is during this formal application phase that it may be appropriate for an application for a water right permit to proceed, although it could be quite some time before a final decision on the occupancy of NFS land is made. The decision could include requirements that conditions be placed on the water right to protect Federal interests on NFS land.

As you know, the property proposed for irrigation is encumbered by a scenic easement held by the United States (Custer County Instrument 137907). We appreciate that in supplemental information requested by the Department of Water Resources, you committed to consulting with the "US Forest Service"... "as needed to ensure that the irrigation system is in compliance with the scenic easement". We also note that in the same document, when presenting information regarding Section 42-203A(S)(e), Idaho Code (Information Relative to Conflict with the Local Public Interest), you conclude "no negative comments or concerns raised" from "interested agencies". However, to date, we have no record that you either advised the Sawtooth National Forest of your proposed development, or solicited our comments as instructed by the State.

As you can see, as required by law, there are many aspects that must be taken into account regarding the occupancy and use of NFS land, as well as terms of your scenic easement. If you have any questions about this matter, please contact Stacey Clark at (208) 727-5000.

Sincerely,



JANE P. KOLLMAYER
Forest Supervisor

cc: Idaho Department of Water Resources