



STATE OF IDAHO

WATER DISTRICT 130

C/O IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST., STE. 200
TWIN FALLS, ID 83301-3380
TELEPHONE NUMBER (208) 736-3033
FACSIMILE NUMBER (208) 736-3037

IDWR INTERIM DIRECTOR
DAVID R TUTHILL, JR

WATERMASTER
CINDY YENTER
Cindy.Yenter@idwr.idaho.gov

August 16, 2007

BRUCE P ROBINSON
804 RIVER VIEW DR
TWIN FALLS ID 83301

RE: Modifications to Freeman Spring Water System

Dear Bruce:

Staff at this office have discussed the concept of a water right transfer of the Freeman Spring water right no. 36-7270, into one or more separate diversion systems which would divert either from the Snake River or from the Country Club Estates pond. While not necessarily non-approvable, your proposal raised staff questions regarding the location of the original irrigated area, possible forfeiture of use, potential for enlargement of use, and/or the ability to administer the changed right. You had also expressed some concern because the right so modified would become appurtenant, or permanently attached, to the new place of use which is mostly or entirely on your lot. The end result may be that other residents forfeit their interest in the right, and I don't believe that is your intent.

You asked for a discussion of other water right approvals which might authorize pumping from the Snake River or from the subdivision pond. The two most viable of these include an exchange of water, or a water right permit.

The rules for exchanges of water are complex, and they hinge on the tributary relationship of the old and the new source of water. In the case of pumping from the Snake River to your lot, an exchange is *not* applicable because the spring is directly tributary to the Snake River. The application for transfer would be required. For pumping from the pond to the Rose property or others on that side of the subdivision, an exchange *could* be utilized because the spring is not directly tributary to the pond, but both are tributary to the river. The spring water would literally be exchanged for water from the pond.

A water right permit filing would create a new water right from the Snake River. The Snake River Basin Moratorium Order, signed by the Director of IDWR in 1992, prohibited development of any new consumptive uses (i.e. irrigation) of either ground water or surface water in the Snake River Basin. There are variances made for domestic purposes, and where mitigation is offered to offset new consumptive use.

A permit for domestic purposes from the Snake River could include authority for up to ½ acre of irrigation, or other uses in association with your residence, pursuant to I.C. 42-111 (river water does not have to be used in-house, just on the surrounding property). The domestic use must be within the exemption limits defined by the above statute, and multiple domestic exemptions, even from separate water sources, cannot be "stacked" to increase the exemption allowances. Because you have a domestic well which you also use for irrigation around your house, your total irrigation from both the well and the river could not exceed ½ acre, and combined domestic use from both sources could not exceed 13,000 gallons per day.

A mitigated water right permit might be developed in excess of the domestic limitations. In this particular case, the non-use of the Freeman right 36-7270, could be offered as mitigation for the development of up to one (1) acre of new irrigation from the Snake River, on a portion of your lot or a common area within the subdivision. The use of the new water right would be limited by 1) the original irrigated area of one acre pursuant to 36-7270, 2) the amount of water available from the spring at any given time, and 3) any priority cuts on the Snake River.

If you obtain a mitigated water right permit, the Freeman right no. 36-7270 would not be modified, and all other property owners would retain their full interest in 36-7270. The other residents would each have to agree to subordinate (not to divert) their portion of 36-7270 to mitigate new use under the junior water right. Right no. 36-7270 would not be subject to forfeiture so long as it is approved for mitigation purposes of a junior right, and the junior right is in use.

If you obtain a domestic permit, the Freeman right 36-7270 would not be encumbered. However, non-use of 36-7270 would likely make that right subject to forfeiture at some point. The domestic permit would have a 2007 priority date, and irrigation under that right could be subject to Snake River priority curtailment pursuant to the Swan Falls agreement. These cuts typically occur later in the summer, and over the past 20 years they have only been imposed once or twice to my knowledge, for a period of about one week in each instance.

Please review this information carefully, and contact Jean Robertson or me when you make a decision, or as you have additional questions.

Regards,



Cindy Yenter
Watermaster, Water District 130

cc: Jean Robertson