



State of Idaho

DEPARTMENT OF WATER RESOURCES

2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

WESTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

May 16, 2007

BRENDAN M SMEDICK
24639 FALCON LANE
CALDWELL, ID 83607

COPY

Re: Application for Permit 63-32419

Dear Applicant:

You recently filed a water right application with the Idaho Department of Water Resources (IDWR) proposing to divert wastewater for irrigation use. I want to bring to your attention a couple of areas that you may want to reconsider and some additional information that will be required prior to further processing your application.

First you listed the diversion rate as 0.11 cfs. For 5 acres or less, we can allow up to 0.03 cfs per acre. Your application states that you want to irrigate 5 acres, which falls within the 0.03 cfs range, which would allow you to request a diversion rate of 0.15 cfs for the same fee amount. You may want to contact me to correct your application to show the full diversion rate.

Secondly, you listed the season of use as 3/1 to 10/31. The standard season of use for your area is 3/1 to 11/15. This correction should also be made to give you the full capability of your water right. Even if the water is generally not available during these times, it would be in your best interests to have the maximum season of use.

Your description in section 6a was too brief to determine how the water will actually be diverted from the ditch. Please send me a letter or written statement describing your plans on diverting the water from the ditch. For example, pump with intake hose in ditch diverted to property, or headgate to culvert with pump to sprinkler irrigation system.

Your property also lies within the borders of the Black Canyon Irrigation District. In section 10, you didn't list Black Canyon Irrigation District water as being used on this property. However, it appears by the aerial photo you supplied with the application and the aerial photos available to our office, that this ground has been irrigated in the past. Please inform us if you have Black Canyon Irrigation District water, or of any other water rights that have been used on this property.

IDWR also must determine whether the water you wish to appropriate is wastewater or whether it is actually “live” water under control of an irrigation delivery organization (“organization”).

Irrigation delivery organizations typically include irrigation districts, canal companies or ditch companies. State law allows for appropriation of unappropriated wastewater, but IDWR is not authorized to issue a permit for use of live water still under the control of an organization. Because of this distinction, it is necessary for IDWR to understand the nature of the water you are seeking to appropriate.

The term “wastewater” may be used in several different contexts. For instance, a water right holder may capture irrigation water “wasting” from the end of his or her fields and reapply the water to the lands described by that water right. Recapture must occur before water leaves the fields covered by that water right. The recapture of this water does not authorize using the water on lands not described by that water right.

The term “wastewater” may also describe a source of water for appropriation. For purposes of appropriation, the source “wastewater” refers to water flowing in a waste way or channel (i.e. a waste drain or waste ditch). In order for the wastewater to be available for further appropriation, the original water user must have discontinued exercising control over the water. A water user receiving live water acts as an agent for the use of organization water while it is in the possession of the water user. If the water user continues to control the surface water before it leaves his or her property, or the water will be recaptured by the organization for delivery to downstream water users, the water retains its original character as the organization’s live water. In that case, the water is not available for appropriation.

Prior to further processing of your application, you must demonstrate that the water you seek to appropriate is flowing in a waste way or channel, has not commingled with other water in a natural stream, and that both you and the organization have discontinued control of the water as live water. This can be accomplished by providing written approval from the irrigation delivery organization. The approval must show the organization does not object to IDWR approval of the proposed quantity of water, the proposed location of the diversion, and the proposed diversion works to be installed. Also, if you propose to divert from a waste channel owned and controlled by an organization, you must show you have a right of way to divert water from the channel.

IDWR will hold your application without processing until the above information is received. If the information cannot be obtained, you can withdraw your application and receive a full refund of the application fee. If you prefer your application to be processed (advertised in local newspaper legal notices) while you seek the above information, please provide written confirmation to allow processing to resume. A refund cannot be issued once the application has been advertised, even if the application is later denied.

5/16/07

Page 3

Please submit the requested information to allow final evaluation of your application to be completed. You may seek additional time to provide the information by making a written request to delay or interrupt processing. **Your written response including the requested information, or a request for more time to seek the information, must be received within thirty (30) days of the date of this letter or by 6/18/2007.** The application will be voided or returned without a timely reply.

IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 208-334-2190 if you have any questions. Thank you for your attention to these matters.

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel A. Nelson", with a long horizontal flourish extending to the right.

Daniel A. Nelson
Senior Water Resource Agent
Western Region