



United States
Department of
Agriculture

Forest
Service

Sawtooth National Forest
Supervisor's Office

2647 Kimberly Rd. E.
Twin Falls, ID. 83301
208-737-3200
Fax: 208-737-3236

File Code: 2700

Date: July 9, 2007

RECEIVED

JUL 09 2007

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Ron and Joanne Smith
P.O. Box 4
Stanley, ID 83278

Dear Mr. and Mrs. Smith,

It has come to our attention that you have filed Application for Permit Number 71-10904 with the Idaho Department of Water Resources with the intention of diverting water from Champion Creek in the NESWSW of Section 13 and the NWNENE of Section 22, T8N, R14E. You identify in your application that the land is owned by the USDA Forest Service,

Although there are other water rights that may divert water from these locations, you need to 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 must be authorized under 19 U.S.C. 551, 43 U.S.C. 1761, 36 CFR 251.50, and 36 CFR 261.10(a). Authorization to begin another diversion or divert water under a new Application for Permit has not been obtained from the Forest Service. Because authorization has not been secured, you are not authorized to occupy and use NFS land for the purpose shown on your application and there is 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 creek, 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.

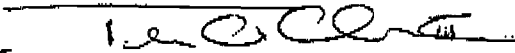
You would then have to identify the facilities and construction activities planned on NFS land in the form of a proposal. This proposal must be of sufficient detail that it can be evaluated against two levels of screening criteria and applicable policy. If your proposal meets these criteria and policy 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 Endangered Species Act, the Historic Preservation Act, and the National Environmental Policy 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 can see there are numerous factors that must be taken into account when the occupancy and use of NFS land is considered, and it is the purpose of this letter to notify you of the requirements for occupancy and use of NFS land. If you have any questions about this matter, please contact me at (208) 737-3200.

Sincerely,


Fv JANE P. KOLLMEYER
Forest Supervisor

cc: Idaho Department of Water Resources