

Cox, Sharla

From: grbfca@comcast.net

Sent: Saturday, March 24, 2007 10:22 AM

To: Tuthill, Dave; Spackman, Gary; Cox, Sharla

Cc: James Wood; Robert Smith; Butch Otter; Cal Groen; Matthew Flitton; Joyce Edlefsen

March 24, 2007

Department of Water Resources
900 N. Skyline Drive Suite A
Idaho Falls, Idaho 83402

Re: Protest to DKJ Farms LLC application for exchange of water within Madison County

Sir:

The past history of Jeppesens' removal of water from Moody Creek demands that this application be denied.

On October 28, 2002 Norman C. Young and on September 8, 2006 Gary Spackman documented that the Department of Water Resources recognized Jeppesens breached the terms of Water Transfer No. 2034 and Water Transfer No. 3002 by employing no acceptable measuring device, by irrigating more than 200 acres yearly with Moody Creek water, and by pumping Moody Creek water into a common irrigation system to their farm. In August of 2001 Ron Carlson of the department, Jamie Wood, Carol Brown, and I witnessed more than 200 acres irrigated solely by Moody Creek water on Jeppesens' farm. I pointed out to Ron Carlson that this was a clear violation of the terms of Jeppesens' water transfers. I wrote to the department in Boise about this first in 2001 and again in 2005.

Unfortunately, the creek has been pumped dry in the past using existing water rights and wildlife has suffered.. To allow an additional 300 acre feet yearly to be removed from Moody Creek would be devastating. Already cutthroat trout became extinct in about an eight mile segment below Jeppesens' creek pumps. The Fish and Game Department recognizes the loss of this invaluable spawning habit. That the extinction of the cutthroat trout fishery is contrary to public interests is obvious.

Because of this breach, I ask that the department perform its duty to the public by declaring Water Transfers Nos. 2034 and 3002 null and void.

The department placed the 200 acre yearly restriction terms in the contracts to protect public interests in the creek, such as the cutthroat trout. The acreage restriction are clearly and straightforwardly stated. The consequences of the department not adequately monitoring Jeppesens over the last 23 years speaks for itself. The department failed to protect the public interest in the past, as it is clearly charged to do. You would be totally irresponsible to the public to allow the above application.

Based on Senior Priority, wildlife and fish claim an instream water appropriation right that requires a sufficient flow to protect them. The Idaho Supreme Court upheld this statue in Dept.

of Parks v. Dept of Water Administration (Idaho 1974) Why do you not enforce this law?

What flow exists in Moody Creek just above Jeppesens' pumps in July, August, September , and October ?

Since Moody Creek is a public creek, the public possesses the right to enjoy this pristine area with its life-giving stream simply because it exists! The department hopefully reacts to public interests rather than what is good for two individual families.

Sincerely yours,

George Brown, MD
1439 Cambridge Drive
Idaho Falls, Idaho 83401

Copy DKJ Farms, 6655 Centennial Loop, Rexburg, Idaho 83440
Gary Spackman and Director Tuthill of Dept. of Water Resources.