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APR 26 2006

DEPARTMENT OF
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April 24, 2006

Mr. David R. Tuthill
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: Water Right License No. 35-8852 of Idaho Fresh Pak, Inc.

Dear Mr. Tuthill:

We are writing this letter on behalf of Idaho Fresh Pak, Inc., at the recommendation of Mr. Roger Warner of the Eastern Region office of IDWR. We recently met with Mr. Warner and explained what has just been discovered regarding the above referenced water right license. He recommended we provide the same information to you, in writing, and request your assistance and suggestions as to how we should proceed.

The problem is that License No. 35-8852, for 0.89 cfs, with a priority of September 14, 1989, which is used by Idaho Fresh Pak, Inc., in the operation of its potato processing plant in Idaho Falls, Idaho, also has an annual volume limitation listed on the license of 36.8 AFA, which we believe to have been determined and placed in the license erroneously. We hope to find an appropriate way to have the mistake corrected.

The relevant background details are essentially as follows: Idaho Fresh Pak owns two potato processing plants in this area: the Idaho Falls plant which we have mentioned, and a larger plant further north near Lewisville, Idaho. The company built the Lewisville plant in about 1960 and the Idaho Falls plant, which was built by Makami Brothers, was acquired by Idaho Fresh Pak from J.R. Simplot in about 1981. When the Idaho Falls plant was acquired, the wells were in operation, and the company continued to operate and use the existing wells pretty much as had been done since they were drilled. In about 1988 or 1989, apparently in connection with the filing of SRBA claims, it was discovered that there was no license or other water right document for the wells at the Idaho Falls plant. Well logs were found, numbers 032732 and 032733, indicating the wells were drilled in about 1966 or 1967 by Andrew Well Drilling of Idaho Falls.

We assume someone at IDWR informed company officers that because the wells were not drilled and use did not commence prior to 1963, it would be necessary to file an application for permit.

The company did file the application which was numbered 35-8852, in September of 1989, seeking 0.89 cfs of water year round for commercial purposes from two wells (the two already in existence since about 1966 or 1967). No annual volume amount was mentioned in the application. Apparently the normal procedures were followed and the permit was issued February 13, 1990 (and received by the company on February 20th of that same year), for 0.89 cfs year round, also with no reference to a volume amount. Because the wells were drilled and in operation, proof of beneficial use was filed by the company's production manager, Robert W. Denning, March 6, 1990. Again, there is no mention of a volume amount in that proof.

In a recent review of the license issued November 25, 1992, someone noticed for the first time the annual volume figure of 36.8 acre feet, did some math, and realized something was seriously wrong. For all the time Idaho Fresh Pak has operated the plant and the wells, both prior to and since the issuance of the license, the annual volume diverted for use in the plant has averaged approximately 425 Acre feet per year. The plant is actually operated 24 hours per day when it is running. The number of days it operates each year varies, but it is often more than 300 days per year. As we calculate it, if water were diverted 24 hours per day, 365 days per year at the rate of 0.89 cfs, some 644 acre feet of water would be diverted.

The company obtained and reviewed the beneficial use field report to see if it could be determined how the volume could have been so far off. The field exam appears to have been performed by one Alan W. Parls in August of 1991. None of us knows Mr. Parls or how he might be reached to see whether he can recall the exam or any details in connection with his performance. The report shows he was accompanied by one Randy Green, who was then a lower level employee of the company. Mr. Green is no longer with the company, but we have been able to contact him. He has indicated all he can recall is that he was asked by a supervisor to show Mr. Parls where the wells were located. He does not remember much else; he did not have very much knowledge about the operation of the wells or the plant.

Under the heading "G. Volume Calculations" in the report, we see Mr. Parls' handwritten note: "Commercial 399.4 gpm x 60 min/hr x 2hr/day x 250 days/year = 11,982g 325,850 g/af = 36.8." We do not know where Mr. Parls may have obtained the figures "2 hr/day" or "250 days/year". The average days per year the company had operated up until 1991 would have been in the range of 250 days, but the plant has always been operated 24 hours per day when operating. It appears to us that the figure of 2 hours per day is a mistake.

LAND APPLICATION OF WASTEWATER PROGRAM ANNUAL REPORT FORMS

Permitted Site Summary

	(1)	(2)
Report-	WW	WW
ing	Applied	Application
Year	MGA	Season
repyear	wwgen	(days)
		wwgenday

Fiscal yr Sept 1 - Aug 31

1985-1986	143.742	220
1986-1987	122.5432	214
1987-1988	142.6472	244
1988-1989	128.9008	253
1989-1990	89.2001	169
1990-1991	179.5421	323
1991-1992	190.9055	306
1992-1993	199.054	325
1993-1994	163.88	300
1994-1995	156.10	304
<i>Nov 1 - Oct 31</i> 1995-1996	177.82	394
1996-1997	118.03	288
1997-1998	179.87	325
1998-1999	169.44	306
1999-2000	141.26	320
2000-2001	81.18	214
2001-2002	95.06	268
2002-2003	149.42	335
2003-2004	149.85	321
		296

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We have enclosed a sheet showing information provided by the company to DEQ, which contains figures showing millions of gallons of waste water annually and the number of days such waste water was applied each year. The amount applied is essentially the amount diverted from the wells for that year and the number of days applied each year is also the number of days the plant was being operated each year (24 hours per day). The fiscal year of the company changed in 1994 - 1995 from September 1 - August 31 to November 1 - October 31. That change accounts for the figure of 394 days shown for 1995 - 1996.

When you have had an opportunity to review this information, we would appreciate receiving your suggestions as to how we might proceed in order to correct the error in the annual volume amount in the license. We have reviewed the "Final Order" issued by the Director in the "Matter of License No. 61-07189 in the Name of Magic West, Inc." which appears to establish the precedent for the Department to amend a license in a situation similar to this one. We are not presently involved in a contested case proceeding regarding License No. 35-8852, but of course will want to proceed in the manner the Department thinks essential to properly correct the error.

We will look forward to hearing from you as soon as it may be convenient.

Yours very truly,



Kent W. Foster

Enclosures

c: Roger Warner - Eastern Region, IDWR