



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

November 30, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

CHARLES G BROCKWAY PHD PE
BROCKWAY ENGINEERING PLLC
2016 WASHINGTON ST NORTH SUITE 4
TWIN FALLS ID 83301

Re: Water Right Permit 37-21243 – Waterford Partners III LLC

Dear Mr. Brockway:

This letter is a response to your email of November 21, 2006 to Shelley Keen of this Department regarding the permit referenced above. You asked about the need for a mitigation plan and the Department's response if a request is submitted for approval of a mitigation plan for the permit.

As you know, the permit is within the Eastern Snake River Plain Moratorium area established under the Amended Moratorium Order dated April 30, 1993. The moratorium prohibits processing and approval of new applications for permits to appropriate water from all surface and ground water sources within the designated area. The moratorium order includes the following language:

The moratorium does not apply to any application for domestic purposes as such term is defined in Section 42-111, Idaho Code. For the purposes of this exception, application for ground water permits seeking water for multiple ownership subdivisions or mobile home parks will be considered provided each unit satisfies the definition for the exception of requirement to file an application for permit as described in said section.

The moratorium does not apply to any application proposing a non-consumptive use of water as the term is used in Section 42-605A, Idaho Code.

The moratorium does not prevent the Director from reviewing for approval on a case-by-case basis an application which otherwise would not be approved under terms of this moratorium if,

- a) Protection and furtherance of the public interest as determined by the Director, requires consideration and approval of the application irrespective of the general drought related moratorium; or
- b) The Director determines that the development and use of the water pursuant to an application will have no effect on prior surface and ground water rights because of its location, insignificant consumption of water or mitigation provided by the applicant to offset injury to other rights.

Application for Permit 37-21243 was reviewed by the Department and approved with conditions to ensure that the use of water was limited to domestic uses as described above. Pursuant to the terms of the moratorium order, a mitigation plan was not necessary to approve the permit as conditioned. In addition, the permit was conditioned further to prohibit irrigation of any kind; therefore, consumption of water under the permit is insignificant and mitigation is not warranted.

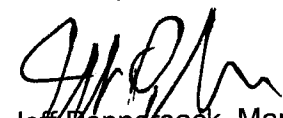
Notice of the application was published as required by law and no protests were filed against the application. The permit was issued on May 19, 2004 as a preliminary order of the Department. The

order has since become a final order of the Department and is not subject to further appeal or reconsideration. One exception is the review after 20 years for the use of trust water, as provided in the conditions of approval.

Regarding pumping levels for prior ground water appropriators, if the use of water under the permit affects wells authorized under senior rights, the Department can regulate based on priority as appropriate pursuant to the Ground Water Act and applicable case law.

If you have questions regarding this matter, please feel free to contact me at 208-287-4948.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Peppersack', with a stylized flourish at the end.

Jeff Peppersack, Manager
Water Right Permits Section