

To: Deborah Gibson, IDWR, 208-287-6700

From: Christopher James 208-879-4902
Living Waters Ranch and Firstfruits Foundation

RE: Permits 72-16624 & 72-16625 August 15, 2006

Dear Debbie,

Thank you for your attentive ear. You helped allay some of the ~~frustration~~ ^{frustrations} I have in completing the necessary forms.

Back in May my attorney, Kent Foster, sent your dept. an application for transfer of water right and an application to lease water right to the water supply bank. Corey Skinner analyzed the application and responded to Kent Foster the accompanying letter. His analysis was excellent and I agree with his findings to reduce the amount of water that will be put into the water supply bank. My problem is that I don't have the expertise to complete the Proof of Beneficial Use form.

The other matter has to do with our request for the aesthetic non-consumptive use permit # 72-16625. If we mitigate with current water rights the 0.15 acres, will the water be shut off according to its priority date? As I mentioned this was previously an old stockwater pond that dates back many years.

The amount of ~~evap~~ water that evaporates from it is calculated to be less than 700 gals/day. Your attention is appreciated.

Thank you, Christopher James



SOUTHERN REGION

State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

DIRK KEMPTHORNE
GovernorKARL J. DREHER
Director

May 12, 2006

Kent Foster
Holden, Kidwell, Hahn & Crapo PLLC
PO Box 50130
Idaho Falls, ID 83405

Dear Mr. Foster:

Please find enclosed a Water Right Transfer Application and an Application to Sell or Lease Water to the Water Supply Bank, along with supporting documents, in the name of First Fruits Foundation that you recently submitted to our office. Also enclosed is the filing fee (check # 34946 for \$290.00) that was submitted with the applications. The cover letter that was included with the application outlines a concept of acres that have been dried up due to building and parking lot construction being available to be transferred &/or placed in the Water Supply Bank. Examination of the documents (map & calculations) that outline the acres that have been dried up, and the actual water rights involved with the applications, reveals some issues and some questions that need to be addressed before the applications can be processed.

Your cover letter indicates that there is a total of 19.6 combined acres that are authorized to be irrigated by rights 72-106C, 72-106H, 72-106J, 72-109J, 72-10486C, and 72-4174C. The letter further states that 5.8 acres (apparently based on the HEDCO map and calculations) have been dried up to due construction of buildings, roads, parking lots, etc. However, examination of the locations of these 5.8 acres and comparing the locations to the decreed place of use for the water rights reveals that the 5.8 acres is not entirely within the 19.6 acres described by the water rights. In addition, portions of these 5.8 acres are tied to specific water rights &/or groups of water rights.

I have included a copy of a map showing the places of use for the rights, copies of proof reports of the six rights, and a copy of the HEDCO calculations with some of my notes written on it. These documents have been color coded for reference so that acre locations can be tied to specific rights and their locations on the map. Hopefully this will help explain the following items of note....

Page 2

Foster/First Fruits Letter

May 12, 2006

The HEDCO calculations identify about 3.8 acres in Section 2 as being dried up. Water rights 72-106J, 72-109J, 72-10486C, and 72-4174C identify a total combined 14.3 acres in Section 2 with 2.6 acres of the 14.3 acres being irrigated by only right 72-4174C and the remaining 11.7 acres being irrigated by all four of the rights. The 3.8 acres identified in the HEDCO calculations does not entirely overlap the 14.3 acres identified by the four rights. For example, a significant portion of the parking lot area (identified as Parking Lot #001 in HEDCO calculations) and buildings #10, #11, #25, #12 and #13 are located in areas not covered by the 14.3 acres authorized to be irrigated by the four rights. In addition, it appears that of the 2.97 acres identified as the parking lot area (identified as Parking Lot #001 in HEDCO calculations) the vast majority of the area (closest to Garden Creek Road) is covered by only water right 72-4174C. The HEDCO calculations also identify 0.25 acres being dried up in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2, but the water rights only identify 0.2 acres being irrigated in the NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 2. Using GIS, I attempted to estimate the parking lot area not covered by the 14.3 acres and came up with about 0.8 acres. Therefore, for the land in Section 2, the following table should summarize the land in Section 2 that is available to be transferred &/or placed in the Water Supply Bank for rights 72-106J, 72-109J, 72-10486C, and 72-4174C....

Area	HEDCO Acres	Just Right 72-4174C	All Four Rights	Notes
Parking Lot #001	2.97	2.0	0.2	0.8 acres not counted (not within 14.3 acres)
Wrangler's Home	0.0297	0.0297		
Bldg #8	0.0458	0.0458		
Bldg #7	0.0457	0.0457		
Bldg #6	0.0487	0.0487		
Bldg #4	0.0263	0.0263		
Bldg #5	0.0121	0.0121		
Bldg #3	0.0271		0.0271	
Bldg #2	0.0263		0.0263	
Bldg #1	0.0268		0.0268	
Bldg #10	0.0247	None	None	Not within 14.3 acres
Bldg #11	0.0234	None	None	Not within 14.3 acres
Bldg #25	0.0256	None	None	Not within 14.3 acres
Bldg #12	0.0727	None	None	Not within 14.3 acres
Bldg #14	0.1022		0.1022	
Bldg #13	0.0357	None	None	Not within 14.3 acres
Bldg #15	0.0159		0.0159	
Parking Lot #003	0.25		0.2	Only 0.2 acres identified on rights
Totals	3.8087	2.2 acres (Rounded)	0.6 acres (Rounded)	

Page 3
Foster/First Fruits Letter
May 12, 2006

The HEDCO calculations identify 0.09 acres to be dried up in the SE $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 35, but the BLM owns this land and the water rights on this land are 72-106K, 72-109K, 72-4174D, and 72-10486D (all in the name of BLM) and not rights 72-106C, 72-106H, 72-106J, 72-109J, 72-10486C, and 72-4174C. If the water off of this land were to be transferred, First Fruits Foundation would have to have written permission from the BLM, since First Fruits Foundation does not own the water rights on this land.

The HEDCO calculations also identify 1.9404 acres to be dried up in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35. Water rights 72-106C and 72-106H are appurtenant to the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, with right 72-106C being appurtenant to 2.0 acres and 72-106H being appurtenant to another 3.3 acres. Examination of the locations of these 1.9404 acres and comparing the locations to the decreed water right places of use reveals that about 1.8 of these acres (all the buildings & 1.4 acres of Parking Lot # 002) overlap with the 3.3 acres described by right 72-106H and less than 0.1 acre overlaps with the 2.0 acres described by right 72-106C.

On a side note, the water right database used by IDWR to inventory water rights will only keep track of acre amounts to tenths (0.1) of an acre, and flow rates to hundredths (0.01) of a cfs. Right 72-106C currently allows for the diversion of 0.03 cfs for the irrigation of 2.0 acres, and the portion of this right appurtenant to the dried up acres identified in the HEDCO calculations is less than 0.1 acre (less than 5% of the right). The proportionate rate for this portion of the right is less than 0.0015 cfs, which is significantly less than the minimum amount of water that IDWR can track in its database, let alone could be practically administered and measured in a water district such as Garden Creek. Since the portion of right 72-106C is so small, it seems reasonable to assume that there is nothing available under this right to transfer or place in the Water Supply Bank.

Therefore, it appears that based on the HEDCO map, calculations, and comparing this information to the decreed water right information there appears to be the following amounts of water rights available to be transferred or placed in the Water Supply Bank...

- A 2.2 acre and 0.10 cfs portion of right 72-4174C.
- Portions of rights 72-106J, 72-109J, 72-10486C, and 72-4174C for a combined total of 0.6 acres, with the individual portions broken down as follows....

72-106J (0.6 acres and 0.02 cfs)	72-109J (0.6 acres and 0.02 cfs)
72-10486C (0.6 acres and 0.01 cfs)	72-4174C (0.6 acres and 0.03 cfs)
- A 1.8 acre and 0.02 cfs portion of right 72-106H

Note that the total number of acres (4.6 acres) differs from the 5.8 acres mentioned in your cover letter and presumably used as the driving force in the proposal.

Page 4
Foster/First Fruits Letter
May 12, 2006

The transfer application proposes transferring a 2.0-acre portion of some combination of rights 72-106J, 72-109J, 72-10486C, and 72-4174C. If this is still desired, we will need to know what this 2.0-acre combination is and consists of. For example, is the 2.0 acres all of the 0.6 acre portion of rights 72-106J, 72-109J, 72-10486C, and 72-4174C and a 1.4 acre portion of just right 72-4174C (leaving a 0.8 acre portion of just right 72-4174C), or is the 2.0 acres perhaps just a 2.0 acre portion of just right 72-4174C (leaving a 0.2 acre portion of just right 72-4174C and the 0.6 acre portion of rights 72-106J, 72-109J, 72-10486C, and 72-4174C), or perhaps some other combination of rights 72-106J, 72-109J, 72-10486C, and 72-4174C?

The cover letter indicates that portions of rights 72-106C and 72-106H are to be placed in the water supply bank. However, the Application to Sell or Lease Water to the Water Supply Bank identifies rights 72-106C, 72-106H, 72-106J, 72-109J, 72-10486C, and 72-4174C and portions of these rights that do not correspond to the amounts available to be placed in the Water Supply Bank. The Application to Sell or Lease Water to the Water Supply Bank is intended to describe one right per application, rather than groups of rights. Depending on how the transfer is configured (see proceeding paragraph) will determine how the Application(s) to Sell or Lease Water to the Water Supply Bank should be filled out (what rights, amounts, etc.). It appears that if the transfer is to involve some 2.0-acre combination of rights 72-106J, 72-109J, 72-10486C, and/or 72-4174C, then there should be some 0.8-acre combination of rights 72-106J, 72-109J, 72-10486C, and/or 72-4174C to be placed in the Water Supply Bank along with a 1.8-acre and 0.02 cfs portion of right 72-106H.

Realistically, the acre difference between the 5.8 acres based on the HEDCO calculations and the 4.6 acres actually available to be transferred or placed in the Water Supply Bank may change the direction that First Fruits Foundation may want to go with regards to these applications. If some combination of rights 72-106J, 72-109J, 72-10486C, and/or 72-4174C are to be transferred to the 2.0 acres that they want to irrigate in the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 2, a large portion, if not all, of the 2.0 acres will consist of just right 72-4174C (relatively late priority and different source(s) than Garden Creek). If they desire to irrigate the 2.0 acres with Garden Creek water, and older priority dates, then perhaps the 1.8-acre portion of right 72-106H should be transferred, and perhaps right 72-4174C should serve as the primary source of water to be placed in the Water Supply Bank.

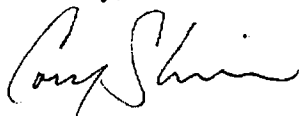
On a side note, existing water right permit 72-16625 in the name of Christopher W James Trust and First Fruits Foundation allows for the diversion of 0.20 cfs of water from Garden Creek for aesthetic use in a pond. One of the conditions of this particular permit is that the permit holder(s) provide mitigation for the evaporative loss of the pond. As of this date, the permit holder(s) have not provided a formal mitigation plan to the Department for this permit. I would assume that if this permit is still desired to be used,

Page 5
Foster/First Fruits Letter
May 12, 2006

then a mitigation plan would have to be submitted and approved by the Department. I would assume that a combination of rights 72-106J, 72-109J, 72-10486C, and 72-4174C would logically be used to provide mitigation for this permit. Since a transfer application is intended to be filed, this may be an opportune time to address the mitigation requirement of permit 72-16625.

Hopefully this letter and enclosures outlines the issues confronting the submitted applications. If you have any questions, or need any further assistance, in particular perhaps some help in completing the applications, feel free to contact me at your convenience.

Sincerely,



Corey Skinner, PE
Water Resource Engineer

Enclosures

08/15/2006

IDAHO DEPARTMENT OF WATER RESOURCES
PRELIMINARY RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-28069

NAME AND ADDRESS: CHESTER HARRIS
20821 TUCKER RD
GREENLEAF ID 83626

SOURCE: GROUND WATER

TRIBUTARY:

QUANTITY: 0.060 CFS
2.900 AFY

The quantity of water under this right for domestic use shall not exceed
13,000 gallons per day.

PRIORITY DATE: 03/01/1963

POINT OF DIVERSION:

T04N R04W S28 NWNESE Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
COMMERCIAL	01/01 12/31	0.060 CFS 0.50 AFY
DOMESTIC	01/01 12/31	0.060 CFS 2.40 AFY

Domestic use is for 2 homes.

Commercial use is for spraying orchard.

PLACE OF USE: COMMERCIAL Within CANYON County

T04N R04W S28 NESW T04N R04W S28 SESW

DOMESTIC Within CANYON County

T04N R04W S28 NESW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for
the definition of the rights or for the efficient administration of the water
rights as may be ultimately determined by the Court at a point in time no
later than the entry of a final unified decree. Section 42-1412(6), Idaho
Code.

The quantity of water decreed for this water right for domestic use is not
a determination of historical beneficial use.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Use of this right is combined with water from Wilder Irrigation District.