



United States
Department of
Agriculture

Forest
Service

Salmon-Challis
National Forest
Challis-Yankee Fork
Ranger District

HC 63 Box 1669, Hwy 93 N
Challis, ID 83226
208 879-4100 fax 208 879-4199

File Code: 2720

Date: June 2, 2006

RECEIVED

JUN 12 2006

DEPT. OF WATER RESOURCES
SOUTHERN REGION

Percy F. Apgar
PO Box 9879
Moscow, ID 83843

Dear Mr. Apgar

This letter is in regard to the Application For Permit, no. 72-16698, you have filed with the Idaho Department of Water Resources (IDWR) to divert water from Lime Creek in the SWSESW of Section 36, T13N, R20E. You state on the application that the point of diversion is located on National Forest System (NFS) land for domestic use on private land. Be advised, any occupancy and use of NFS land to construct and operate water diversion and transport facilities requires a special use authorization from the Forest Service pursuant applicable laws and regulations such as, the Organic Administration Act (19 U.S.C. 551), Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761), and 36 Code of Federal Regulations (CFR) at 251, Subpart B – Land Uses.

At the present time you are not authorized to occupy and use NFS land for this purpose. Because of this, you do not have the ability to exercise the beneficial use of water as shown on your application. Failure to secure a special use authorization could be a violation of the laws and regulations cited above and could result in the issuance of a violation notice pursuant to 36 CFR 261.10(a) – constructing or maintaining a facility without a special use authorization. Therefore, this letter serves to notify you of the need to request and obtain the necessary authorization from the Forest Service.

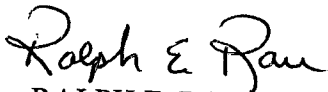
Please find enclosed a brochure "Obtaining a Special Use Authorization with the Forest Service" which describes the basic proposal and application process. The procedures and criteria that must be considered in this situation include specific direction to deny proposals for use of NFS land which can 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 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. If you have any questions about this matter, please contact Norma Staaf, Special Use Permit Administrator at (208) 756-5128 or me at (208) 879-4125.

Sincerely,


RALPH E. RAU
District Ranger

Enclosure

✓
cc: Idaho Department of Water Resources, Southern Region, 1341 Fillmore St., Suite 200, Twin Falls, Idaho 8330, Norma Staaf, Steven M Spencer