



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

June 1, 2006

JAMES E. RISCH
Governor

KARL J. DREHER
Director

KENT W FOSTER
HOLDEN KIDWELL HAHN & CRAPO PLLC
PO BOX 50130
IDAHO FALLS ID 83405

RE: Permit 72-16625, Christopher W. James Trust and Firstfruits Foundation

Dear Mr. Foster:

On May 19, 2006 you sent a letter to Jeff Peppersack of the Idaho Department of Water Resources (IDWR) regarding the permit referenced above. You asked for clarification of the need for mitigation associated with the permit.

The amended preliminary order dated September 3, 2004, requiring mitigation to protect senior water rights from injury. The hearing officer for the contested case recognized the existence of a stock pond and consumption of the water in the pond by stock. However, a right for the use of stockwater was not determined and the record does not include any proposal by the applicant to mitigate for losses using a stockwater right or any other water right. As you noted in your letter, the application was submitted as a new application to appropriate water, not as an application for transfer of an existing water right. As a proposed new appropriation, the hearing officer determined that the applicant must mitigate for losses resulting from the new appropriation.

The applicant did not file a petition for reconsideration or request clarification of the amended preliminary order. The order is now a final order. IDWR cannot change the conditions of the approval without somehow reopening the contested case.

You expressed frustration about Firstfruits' unsuccessful attempts to propose mitigation, and suggested IDWR staff could more efficiently determine an appropriate mitigation plan and prepare a transfer and water supply bank application. IDWR staff has been instructed to refrain from preparing applications for water users. Active preparation of an application by IDWR staff has often caused the applicant to unreasonably expect approval when a proposal is later scrutinized or contested. The applicant, or the applicant's attorney or consultant, must gather the necessary information, decide the best course of action, and complete the application. IDWR staff is available to provide information and discuss options for consideration by the applicant.

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I encourage you to continue working with Corey Skinner, who can provide you with information and address your questions regarding Firstfruits' existing rights and the possibilities for mitigation related to permit 72-16625.

Please feel free to contact me at 208-287-4943 if you want to discuss this matter further. As always, I value the work you do and your friendship.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Spackman", with a stylized, flowing script.

Gary Spackman
Bureau Chief, Water Allocation Bureau

Cc: Corey Skinner