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May 19, 2006

Jeff Peppersack, Manager
Water Rights Permit Section
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: Permit No. 72-16625, Christopher W. James Trust and First Fruits Foundation

Dear Mr. Peppersack:

We are in receipt of your letter of May 15, 2006, in the above referenced matter. You have clarified for us the extent of the mitigation requirement of 0.4 acre feet of water per year (2.5 acre feet per acre times 0.15 acres - we mistakenly used the figure of 0.10 acres in our letter, which came from the preliminary order - apparently the pond grew between the time of that preliminary order and the amended preliminary order), and have suggested that an acceptable way to accomplish this mitigation requirement is to dry up 0.15 acres.

But we have not received any response to our inquiry as to why there should even be any mitigation requirement. The Amended Preliminary Order appears to recognize that the pond had existed for some period of time as a stockwatering pond prior to these proceedings. As we said, we find it difficult to conceive that the "consumptive" use increased when the use of the pond was converted from stockwatering to aesthetics.

We assume the stockwatering was done pursuant to water right no. 72-4174C which appears to limit consumptive use to 13,000 gallons per day. If our math is correct, the evaporative loss from the pond of 0.4 acre feet per year, even if it all occurred during the 214 days of the irrigation season, would only be about 609 gallons per day. Without any cattle drinking from the pond, it is hard to visualize how the limitation would be exceeded.

We realize 72-16625 was initiated as a new Application for Permit and not as an Application for Transfer, and it probably makes little sense to withdraw the one application at

this point and file the other. But we are struggling to understand why there should be any mitigation requirement when there will be no increase or change in evaporative loss (or to our knowledge in seepage or other losses), and, if anything, a decrease in consumptive use.

Nor is there any indication that we can find in the Amended Preliminary Order to the effect that conveyance or seepage losses are anticipated to change in anyway that could measurably reduce the amount of water available to senior priority rights from Garden Creek for any period of time. Such a conclusion would apparently be based on mere speculation. Measurements thus far taken, have not supported such a theory. What good purpose will be served by mitigation?

Having again asked the questions to which we think a straight forward answer would be helpful, neither can we say we fully understand what is meant when you say "the permit holder should provide the water right number and specific location and acres proposed for mitigation." In our last letter, we referenced all the right numbers under which water is diverted at both the upper and lower points of diversion as we understand them. We are enclosing a map and a chart prepared by an engineering firm for the client which shows the exact locations and square footage (also converted to acreage) for the pieces of the client's property that are no longer irrigated because of the building of buildings, roads, parking lots and other facilities in connection with development of the church camp.

From the maps previously provided to us by the Southern Region office of IDWR, it appeared to us that all of these facilities were constructed on formerly irrigated land, and that the approximately 5.8 acres covered by such facilities and no longer irrigated reduced the total of 19.6 acres authorized for irrigation under the referenced water rights to some 13.8 acres. We were trying to assist the same client in protecting portions of such rights from forfeiture with a small proposed transfer of two of such acres and by leasing the balance to the water bank. As you can see from the enclosed letter from Mr. Corey Skinner, he disagrees with our understanding of the number of dried up acres. He has available technology to which neither we nor very many consultants presently have access.

If IDWR is going to insist on such hypertechnical analysis, using software most of us do not have and would not use exactly the same as IDWR anyway, we think IDWR should be prepared to assist applicants in the preparation of applications and mitigation plans. The costs - benefit ratio to an entity like First Fruits Foundation cannot look very positive for such small amounts of water and acreages. It is difficult to see how there is any measurable or practical benefit to the state and its citizens from this micro-analytical effort.

Assuming it is possible to determine to IDWR's satisfaction how many acres formerly irrigated have already been dried up, why does it matter which 0.15 is selected for this specific mitigation requirement? Why would it not be possible for someone like Mr. Skinner (rather than the applicant) to decide how many acres have been dried up under which rights, and then assign whichever portions make the most sense to IDWR to the transfer, to the mitigation, and any balance to the water bank? For the client or his attorney, or even his consultant, to try to guess what IDWR may eventually approve is an extremely frustrating and expensive experience, and frankly is not justified by the theoretical minor benefits.

As we expect IDWR is not going to approve any proposal that does not meet its own perceptions of the law and the scientific facts anyway, it seems to us it would be more efficient for the client to attempt to express his ultimate objective and let IDWR prepare the applications and/or mitigation plans to accomplish any objective it thinks legitimate. There will be plenty of work for the lawyer and the consultant, if and when the matter becomes a contested case. But, at least as to the lawyer, there is little he can do to assist a client in preparing an application or a mitigation plan. There are no very helpful guidelines. Very little of the detail being required by IDWR is directly referenced in any statutes or even in any rules or regulations that may have the force and effect of law. Frankly, the inter-departmental memos, copies of some of which we may have seen or been able to obtain from time to time, are not often helpful either.

As you can see, our frustration level is high. It appears to us only IDWR personnel can properly advise the client in this case, or assist in preparation of the documentation. We suggest the mitigation plan, as well as the application for transfer and application to lease water rights to the water bank referenced herein in connection with the matter discussed in the enclosed letter from Mr. Skinner, can best be prepared by someone such as yourself or Mr. Skinner.

We will appreciate hearing further from you.

Yours very truly,



Kent W. Foster

c: Mark Bryan - First Fruits Foundation
Corey Skinner - Southern Region Office, IDWR

HEDCO, Inc.
1708 "G" Street
Lewiston, ID 83501
(208) 798-5422
(208) 746-3899 Fax

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TRANSMITTAL TO:

HOLDEN, KIDWELL, HAHN & CRAPO
Attn: Kent Foster
1000 Riverwalk Drive Suite 200
Idaho Falls, ID 83405

WE ARE SENDING:

HEREWITH ☒ UNDER SEPARATE COVER ☐

Copies	Item	Date	Drawing Number
1	Living Waters Ranch Bldg. & Parking Areas	6-15-05	402-90
1	Irrigation Mitigation Areas	6-17-05	

Remarks: Attached Living Waters Ranch irrigation mitigation areas.
Please call if questions.

Date:

6/17/05

By:

Justin S. Hammond, PE

LIVING WATERS RANCH

IRRIGATION MITIGATION AREAS

DWG NUMBER OR NAME	NE1/4,NW1/4, SECTION 2	Acres	NW1/4,NE1/4, SECTION 2	Acres	SE1/4,SW1/4, SECTION 35	Acres	SW1/4,SE1/4, SECTION 35	Acres
Parking Lot #001	129,418	2.97						
Wrangler's Home	1295	0.0297						
Bldg. #8	1993	0.0458						
Bldg. #7	1990	0.0457						
Bldg. #6	2121	0.0487						
Bldg. #4	1146	0.0263						
Bldg. #5	528	0.0121						
Bldg. #3	1180	0.0271						
Bldg. #2	1147	0.0263						
Bldg. #1	1168	0.0268						
Bldg. #10	1076	0.0247						
Bldg. #11	1020	0.0234						
Bldg. #25	1115	0.0256						
Bldg. #12	3165	0.0727						
Bldg. #14	4453	0.1022						
Bldg. #13	1557	0.0357						
Bldg. #15	692	0.0159						
Parking Lot #003			10,834	0.25				
Parking Lot #004					3928	0.09	65127	1.50
Parking Lot #002							10069	0.2311
Bldg. #16							3832	0.0880
Bldg. #17							3444	0.0791
Bldg. #18							1836	0.0422
Bldg. #21								
TOTAL IN ACRES		3.5587		0.25		0.09		1.9404



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

SOUTHERN REGION

DIRK KEMPTHORNE
Governor

KARL 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 due to 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....

MAY 16 2006

COPY

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 ¼ NE ¼ of Section 2, but the water rights only identify 0.2 acres being irrigated in the NW ¼ NE ¼ 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)	

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.

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,

A handwritten signature in black ink, appearing to read "Corey Skinner". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Corey Skinner, PE
Water Resource Engineer

Enclosures



REVISION		DATE	BY	CHK	APP
NO.	DESCRIPTION				

PROFESSIONAL ENGINEER LAND SURVEYOR
#2102
DATE OF EXPIRATION 6/15/25

DRAWN BY		CHECKED BY		DATE		SHEET		DRAWING #	
NAME	DATE	NAME	DATE	DATE	DATE	NO.	NO.	NO.	NO.
MCL	6-15-05	JSH	6-15-05	6-15-05	6-15-05	90	402	402-90	402-90

Living Waters Ranch
Challis, Idaho

HEDCO

HAMMOND ENGINEERING & DEVELOPMENT CO.
1700 G ST. CHALLIS, IDAHO 83201
(208) 788-5422

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