



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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May 15, 2006

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

KENT W FOSTER
HOLDEN, KIDWELL, HAHN & CRAPO, P.L.L.C.
PO BOX 50130
IDAHO FALLS ID 83405

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

Dear Mr. Foster:

I have been asked to respond to your letter of May 8, 2006, addressed to David Tuthill of this Department. In your letter, you asked how the permit holder should comply with the mitigation condition in the Amended Preliminary Order authorizing the permit (no. 72-16625).

The order, which is now a final order of the department, requires the permit holder to submit a written plan describing how losses attributable to the aesthetic use will be mitigated. In the order, Findings of Fact no. 25 finds that the surface area of the pond is about 0.15 acres. Conclusions of Law no. 12 concludes that the evaporative depletion is about 0.4 af per year ($2.5 \text{ af/acre} \times 0.15 \text{ ac.}$) from Garden Creek. Since the permit authorizes a water use which would reduce the amount of water available to senior priority water users from Garden Creek, the mitigation plan must demonstrate how the losses will be addressed to ensure that flows in Garden Creek are not reduced.

Mitigation could be provided in various ways, but as you noted in your letter, the most obvious plan would be to dry up some irrigated acreage. If non-use under a valid right is selected, the permit holder should provide the water right number(s) and specific location and acres proposed for mitigation. The department generally recognizes a one-to-one relationship between depletion due to irrigation and depletion due to evaporation from a pond.

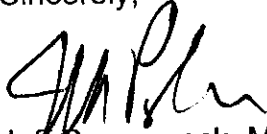
The order approving the permit also includes the following condition:

The right holder is not authorized to divert water to its pond for aesthetic purposes when the applicant's irrigation rights are not being delivered unless the applicant provides suitable mitigation to compensate for system losses.

The losses contemplated in the condition have not been itemized in the order, but could include conveyance and other seepage losses associated with delivery and use of water in the pond. Although non-consumptive, the losses may still reduce the amount of water available to senior priority water rights from Garden Creek for a period of time. The permit holder may wish to seek the help of a qualified consultant to determine the losses if diversion to the pond is desired at times when their irrigation rights are not being delivered.

Please feel free to contact me at 208-287-4948 if you have any questions.

Sincerely,

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

Jeff Peppersack, Manager
Water Right Permits Section

JP:klt