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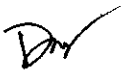
RECEIVED
MAY 10 2006
DEPARTMENT OF
WATER RESOURCES

Christopher W. Holden
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May 8, 2006

Mr. David Tuthill 
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098

Re: Permit No. 72-16625 - In the Name of Christopher W. James, Trustee of the
Christopher W. James Trust and First Fruits Foundation

Dear Mr. Tuthill:

We are writing this letter on behalf of Christopher W. James, Trustee of the Christopher W. James Trust and of First Fruits Foundation, the holder of Water Right Permit No. 72-16625. The permit contains the following condition:

“Prior to diversion of water under this right, the right holder shall submit to the Department for review and approval a written plan describing how the right holder will mitigate losses attributable to diversion and use of water under the aesthetic use.”

Our clients want to comply with every condition and have asked us to tell them how to mitigate for any losses “attributable to diversion and use of water under the aesthetic use.” We did not participate in the proceedings on the Application for 72-16625 so we may not be aware of the details of any evidence presented, but after discussing the matter with the clients as well as the client’s employees and experts, and after reviewing the measurements of the Watermaster and the comments contained in the “Amended Preliminary Order”, we must confess confusion and request some further direction.

First, as we understand it, the applicant’s objective was to obtain IDWR approval in connection with some changes applicant made with respect to an existing livestock watering pond. While we have not seen it, we understand that the pond is located on an existing ditch out of Garden Creek which conveys water from Garden Creek under a number of water rights for

irrigation of small acreages (including numbers 72-106C, 72-106H, 72-106J, 72-106K, 72-109J, 72-109K, 72-10486C and 72-10486D).

Applicant's predecessor had constructed a small pond (the hearing officer found it to be about 0.1 acre in surface area) for watering of livestock. The ditch diverts water under the irrigation rights listed above from the "lower diversion" near the western edge of the NENW (SWNENW - Lot 3) of Section 2, T13N., R18E. The pond is near the center of the quarter-quarter (or Lot 3) and water passes through the pond back into the continuation of the ditch for irrigation and thence back to Garden Creek.

The applicant no longer waters stock from the pond, but rather maintains it for aesthetic purposes in connection with the church camp and convention center applicant operates on the land. We understand that, except for keeping the pond and its banks clean and attractive, there have been no other modifications, particularly the increasing of its size, from the original stockwatering pond.

There is also an "upper diversion" for many of the same irrigation water rights (actually 72-106F, 72-106J, 72-106K, 72-109F, 72-109J, 72-109K, 72-10486A, 72-10486C and 72-10486D) located near the center of the NESE of Section 3, T13N., R18E., from which applicant has installed a pressurized bubbler pipeline to water much of the same land. From this pipeline, applicant added a small pipeline to bring water to a fountain device in the pond, which, under gravity pressure, can propel a small stream of water into the air above the surface of the pond for the fountain effect.

Our confusion results from our lack of understanding of the hearing officer's imposition of the flow limitations and mitigation requirements with respect to the applicant's changes in use of the pond. We do not understand why the flow through the ditch and the pond would have been modified from what had historically been done in connection with the use of the pond as a stockwatering pond and the ditch as an irrigation ditch. Although there is undoubtedly some seepage and evaporation from the pond, it does not seem to us that these items would have changed as a result of the conversion of the pond from stockwatering purposes to aesthetic purposes, except that perhaps the consumptive use may have been diminished by the amount the cattle previously drank. If there is any increase in the evaporation associated with the fountain, it has proved impossible to measure. Please help us understand specifically what we are required to mitigate, and how the amount might be properly determined.

If we can determine the mitigation requirements, the most obvious plan would be to dry up some irrigated acreage. In fact, of the total of about 19.6 acres authorized for irrigation under rights nos. 72-106J, 72-109J, 72-10486C, 72-4174C, 72-106C and 72-106H, some 5.8 acres has

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already been taken out of irrigation in the past few years from construction of buildings, roads, parking lots and ball courts in connection with development of the church camp and convention center.

We will certainly appreciate your assistance and direction in this matter. Thank you for your kind attention and consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kent W. Foster", written in a cursive style.

Kent W. Foster