



State of Idaho

DEPARTMENT OF WATER RESOURCES

900 N. SKYLINE DR., SUITE A, IDAHO FALLS, ID 83402-1718

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EASTERN REGION

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

August 12, 2004

Mr. Kurt Bird
HC 68 Box 40
Leadore, ID 83464

Re: Project No. 74-7346

Dear Mr. Bird,

Recently I spoke to you about the above referenced application for permit that has been put on moratorium hold. I had indicated that I would look into the disposition of the moratorium to determine whether or not it could be processed.

Your application is being held under the moratorium order issued by the Director of IDWR on October 26, 1999. The moratorium order prohibits the processing of new applications for consumptive uses of surface water and ground water in the areas within and tributary to the Selway-Bitterroot Wilderness Area, the Gospel-Hump Wilderness Area, and the Frank Church-River of No Return Wilderness Area. The Director issued the moratorium order in response to a series of court rulings granting the United States reserved water rights for all the unappropriated water in the three wilderness areas, including water in the Salmon River. The Supreme Court of the State of Idaho later reversed the rulings that granted reserved water rights to the federal government for the Salmon River within the wilderness area. However, in the Snake River Basin Adjudication (SRBA), the United States has also filed claims under the Wild and Scenic Rivers Act to the water flowing in the Salmon River. The federal claims have not yet been resolved. It would not be prudent to authorize new water rights for diversions of water tributary to the Salmon River when those rights may ultimately have to be curtailed to satisfy federal instream flow rights. Therefore, the moratorium has remained in place while the federal claims are pending before the SRBA court. At this point, no one can be sure how the claims will be resolved or whether the moratorium will be lifted once the claims are resolved.

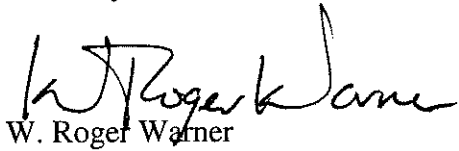
The moratorium order does not close the door completely on the processing of new applications. The order provides for the processing of applications if the applicant provides a plan to mitigate for depletions of water caused by the proposed use. The mitigation requirement for 40 acres at your proposed place of use is 100 acre-feet of water delivered from another source to the Salmon River or a tributary upstream from the federal instream flow claims.

IDWR will continue to hold your application for permit until the moratorium is modified or lifted or you offer an acceptable mitigation plan. Meanwhile, leaving your

application on file with IDWR establishes a priority date in case the application is approve in the future.

If you have any questions, please feel free to call.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Roger Warner". The signature is fluid and cursive, with the first name "W." being more prominent.

W. Roger Warner
Water Right Supervisor – Eastern Region