



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

December 8, 1999

Mark Lupher
HC 61 Box 3016
Challis, ID
83226

RE: License 72-07209; Apps. For Permit Filed 10-18-99

Dear Mark;

After much thought, I have reached the following conclusions concerning water use on your leased property on Warm Springs Creek (in no particular order). On your application for 1.1 cfs on springs, I have added the creek as a source. This flow was measured below where the springs feed into the ditch, so includes both sources. A copy of the corrected app. is enclosed for your review. Unless you feel that changes are needed, this filing should be ready for advertising.

With regard to you application on Warm Springs, I don't think that you filed on the correct amount. Bob Foster measured 13.1 cfs being re-diverted from the canal last August, so you should file on this amount unless you have decided to operate with a lesser rate. The entire flow goes through both your "old" and "new" raceways, so should be part of your new application. If the increased flow of 7.04 cfs (13.1 cfs minus 6.06 cfs licensed) went only through your "new" raceways, then applying for on the increase would be correct. Your "old" raceways hold 0.8 acre feet of licensed water, while the "new" raceways hold an additional 0.3 acre feet not covered by the license. The application fee for 13.1 cfs is \$360., whereas the fee for 4.5 cfs is \$180. If you concur with my conclusions, an additional \$180. is due before this application can be advertised.

I spoke to Shelley Keen of our Boise office about your settling pond. The original fish hatchery apparently did not have settling ponds, even though they are a standard requirement on fish permits. Shelley said that the volume of any settling ponds is normally counted as part of the overall facility volume, so both the main on-stream pond and the smaller off-stream pond represent new facility volume that can be licensed under

72-07580



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

the applications for fish propagation that you have filed. A separate application is not needed for these ponds; if you agree, we can refund the \$100 filing fee already paid. Or the fee can be switched over to cover the enclosed transfer, which has the same filing fee. Completion of the enclosed withdrawal form will facilitate this action.

As far as your wildlife ponds are concerned, the recent moratorium prevents us from approving permits for anything but in-house culinary uses and non-consumptive uses such as fish propagation and hydropower. Water storage, regardless of pond size, is considered to be a consumptive use under the moratorium. While applications can be filed for storage, they cannot be processed at this time. There are really two separate pond systems on your property, and a separate application is needed for each system. The larger on-stream pond near your home is one system, and has only a storage component. The smaller ponds on your diversion ditch have both a cfs rate for diversion to storage and a storage volume. While these ponds share a point of diversion with your 1.1 cfs application, they have a different flow rate (maybe 0.1 cfs), use and place of use, so it makes sense to cover them with a separate application. I have corrected your existing application to reflect the present water use in the on-stream ponds, and have prepared a new application to cover the off-stream ponds. Your proposed cooling use can be added to the new application at no additional cost, or you can file a separate application later for an additional \$50. The application will be held in the moratorium either way; let me know how you want to proceed. Where will the trucks be filled if the cooling use is approved?

I have prepared an application for transfer to cover the differences between what is licensed and what is occurring on your property at this time (up to the limits of the license). If this is satisfactory, the application should be signed before a notary and returned to me for processing.

To reiterate, this letter makes the following suggestions: increase your diversion rate from Warm Springs to 13.1 cfs (\$180 additional filing fee due); withdraw application for settling pond, file application for transfer (no additional fee due); file application for permit for off-stream wildlife ponds (\$50 fee due). If you decide to follow all these suggestions, an additional filing fee of \$230 is due to IDWR. This may sound greedy, but it is not meant to be. I am just trying to insure that your water rights end up covering your actual use of water on this property. These are your applications, of course, so we will process whatever you ask us to (moratoriums permitting).

Regards,



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**

James E. Stanton
Sr. Water Resource Agent