



United States
Department of
Agriculture

Forest
Service

Caribou-Targhee National Forest
Montpelier Ranger District

322 North Fourth Street
Montpelier, ID 83254
208-847-0375

File Code: 2540

Date: December 13, 2005

Dan or Donna Peart
Peart Ranch LLC
P.O. Box 128
Randolph, UT 84064

RECEIVED
DEC 14 2005

Dear Dan or Donna;

I see that you have filed an Application For Permit, [Number 24-10688], to appropriate the public waters of the State of Idaho with the Idaho Department of Water Resources (IDWR). This application is to divert water from Manning Spring in the SWSWSE of Section 30, T9S, R46E, Boise Meridian, and the purpose of use is for domestic use at a single family dwelling on private land. Our records show that this spring and point of diversion is on National Forest System (NFS) land.

You have contacted us about this matter and are aware that you must receive authorization for this use of NFS land from the USDA Forest Service. At the present time you are not authorized to occupy and use NFS land for this purpose.

All occupancy and use of NFS land to construct and operate water diversion and transport facilities or to use water on NFS land must be authorized under 19 U.S.C. 551, 43 U.S.C. 1761, 36 CFR 251.50, and 36 CFR 261.10(a). Because you are not authorized to occupy and use NFS land for the purpose shown on your claim there is no ability to exercise the beneficial use stated in your application. To do so could be a violation of the laws and regulations cited above.

Forest Service personnel collected information on this spring in May of 1995 indicating a flow of approximately 4 gpm. The IDWR has already issued a licensed water right No. 24-02046 for this spring to the Tolman Family Association for 0.02 cfs of water, or 9 gpm. Our observations indicate that the spring produces not even half the amount of water needed to supply water for this one water right. For this reason we believe approval of additional water rights would be futile and place unreasonable expectations and demands from resources on NFS land.

Some observations and comments we have concerning your application are that it is partially correct in Number 12 where it is stated that, "the Tolman Family has an agreement with the Forest Service to divert from the spring up to 0.02 cfs." The statement in Number 12 continues, "The Tolman's conveyed water to the Peart Land & Development. They agree that Dan can divert from the spring." If Tolman's conveyed water to you, then they must have agreed to give, sell, or deed to you a portion of (or split) their licensed water right No. 24-02046 with you. If this is the case, then all you would need to do is to complete and file with IDWR a Notice of Change of Water Right Ownership showing the proportionate "split" of water right 24-02046, and no new water right would be needed. Then, I would work with you and Tolman's on the specifics to include you, as a new owner of a portion of the existing water right, to the existing special use permit authorizing that purpose on NFS land because this would not be a new use of NFS land.

I also see several items in the application that deserve attention. They are:

Pear & Land & Development LLC should be Peart Land & Development LLC



The source should be spring, not Manning Creek.
Then the tributary should be Manning Creek, not Crow Creek.

At the present time I see two distinct options. The first is pursuing your application for permit No. 24-10688, which is a new appropriation of water. Your Application For Permit would establish an new water right appropriation that encumbers NFS land. The procedures and criteria that must be considered in this situation are numerous and include specific direction to deny proposals for use of NFS land which can reasonably be accommodated on non-NFS lands and not to authorize the use of NFS lands just because it affords the applicant a lower cost and less restrictive location when compared with non-NFS lands. You will have to provide evidence and documentation including estimated costs, to the Forest Service of attempts and efforts to secure water on private land by other means, such as drilling a well, developing another source of water, or hauling water that does not involve NFS land. This needs to lead to the conclusion that there is no other reasonable source of water on private land. If other reasonable sources are not diligently sought, a special use authorization must be denied. There is also the issue that the spring only produces 4 gpm, so there is no other water available for a new appropriation. This information is needed before any consideration of a special use authorization can begin.

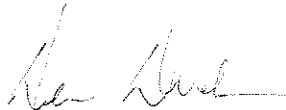
Your proposed use of NFS land must also be evaluated against two levels of screening criteria. If your proposal meets these criteria and all policy requirements, it would then be appropriate for you to submit a formal application for the proposed occupancy and use of NFS land. The application would then be assessed in accordance with applicable laws such as the Endangered Species Act, the Historic Preservation Act, and the National Environmental Policy Act. It is during this formal application phase that it may be appropriate for an application for a water right permit to proceed although it could be quite some time before a decision on the occupancy of NFS land is final.

I want you to understand that this is what is required of all new proposals to use NFS land. Your proposal at this time is entirely separate from the Tolman's existing licensed water right issued by the State of Idaho and their corresponding special use authorization to have diversion and conveyance facilities on NFS land. You are proposing to establish a new water right that necessitates use of NFS land.

The second would be for you to work out the details of a split of licensed water right No. 24-02046 with Tolman's and then provide evidence of that split to the Forest Service. Then the details of the special use permit can then be worked out.

Please consider this information. If you have other information that would help me work through these issues please contact me. I want to evaluate this matter with accurate facts and information. If you have any questions, please contact me at (208) 847-0375.

Sincerely,



DENNIS DUEHREN
District Ranger

Cc: Idaho Department of Water Resource