

MEMORANDUM

To: File no. 45-13852
From: Gary Spackman
Date: November 15, 2005



Re: Concerns about Dewatering Marsh Creek

Application to appropriate water no. 45-13852 (Six S Ranch) proposes diversion of 30.0 cfs from Marsh Creek for water quality improvement and for wildlife. Information supporting the application states that the applicant intends to divert all the water out of Marsh Creek when flows are 30.0 cfs or less.

On August 1, 2005, Southern Region of IDWR sent a copy of the application to Mike McDonald of the Idaho Department of Fish & Game (Fish & Game) located in Jerome, Idaho. The letter asked McDonald to review the application and comment or recommend action. McDonald did not write a response to IDWR's inquiry.

Diversion of all the water out of a natural channel, particularly when the amount is as large as 30.0 cfs, creates a near presumption that the application is not in the public interest. I believe there must be some express response from Fish & Game when confronted with this set of facts. If Fish & Game states that it supports or is not opposed to the application, IDWR can approve the application.

I visited with Dave Parrish, manager of the Jerome office of Fish & Game, about the application and faxed him a copy. Parrish discussed the application with McDonald. McDonald called me and left a voice mail message. McDonald stated that Fish & Game does not oppose the diversion proposed by application no. 45-13852 if the construction allows for free passage through the artificial channel and constructed ponds.

Rather than ask McDonald for a written response, this memo documents the consent of Fish & Game to the proposed construction and diversion of the entire flow of Marsh Creek. The following conditions should be added to the permit:

The channels, ponds, and conveyance works authorized by this permit and any subsequent license shall be constructed and maintained to provide fish passage in Marsh Creek between the lower and upper ends of the proposed project to the satisfaction of the Idaho Department of Fish and Game.

The Director retains jurisdiction to require a bypass flow for maintenance of fish, wildlife, riparian, and aquatic habitat.