



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 327-7900 FAX: (208) 327-7866

September 29, 1999

DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

VIOLET RICH
ROLAND C RICH
JAN R DENLINGER
1213 W 600 S
PINGREE ID 83262

RE: Water Appropriation Permits 27-07013 & 27-07020

Dear Ms. Rich, Mr. Rich, and Mr. Denlinger:

I am writing in response to your September 7, 1999, letter in which you raise several questions about IDWR's efforts to issue water right licenses for the development that occurred under Water Appropriation Permits 27-07013 and 27-07020. I believe I can best respond to your concerns by addressing the following four items related to these water right filings: ownership of the permits and Snake River Basin Adjudication (SRBA) claims, amount of water, and the need for amendments, and amendment fees.

Ownership of the Permits and SRBA Claims

Thousand Springs Trout Farms, Inc., a Delaware corporation, applied for Permits 27-07013 and 27-07020 in 1971 and received approvals soon thereafter. Both applications indicated that Indian Springs Trout Company, a division of Thousand Springs Trout Farms, Inc., obtained a 25-year lease from Mrs. Leva Rich in 1969 for the land where the permits were to be developed. Permit 27-07013 was issued with the following condition.

That the applicant shall not assign, sell nor transfer ownership of the permit without the written approval of the Director of the Department of Water Administration. Any attempt to make such transfer without prior approval will be taken as an admission that the application was not filed in good faith and that the applicant had no intention of developing the project with his own resources but that the application was filed for purposes of delay or speculation.

As explained by Cindy Hodges and Shelley Keen in separate letters to you, permits to appropriate water are personal property and, therefore, must be assigned from one party to another to transfer ownership. The water right files contain no evidence that Thousand Springs Trout Farms, Inc.,

ever assigned the permits to anyone, nor did Thousand Springs seek approval from IDWR to make an assignment for Permit 27-07013. Therefore, the record still shows Thousand Springs as the owner of the permits, and IDWR's requests for amendments were directed to Thousand Springs Trout Farms, Inc., in December of 1998.

IDWR did not receive the necessary amendments from Clear Springs Foods, Inc., which purchased Thousand Springs in 1981, or from Aqua Life, Inc., which has filed claims to the rights in the SRBA. You were contacted about the amendments because you filed a Notice of Change of Water Right ownership attempting to assert ownership of the SRBA claims filed by Aqua Life for Permits 27-07013 and 27-07020. Despite your ownership change notice, which would be appropriate for decreed, licensed, or claimed water rights, without assignments IDWR cannot recognize you as owners of the permits. Nevertheless, IDWR will accept the amendments from you but will issue the licenses in the name of Thousand Springs Trout Farms, Inc. Once licenses are issued to establish the water right elements (amounts, season of use, points of diversion, etc.), the claims to 27-07013 and 27-07020 can move forward in the SRBA and ownership assertions can be resolved through the SRBA court's process.

Amount of Water

Permit 27-07013 authorized the diversion and use of 90 cfs for fish propagation purposes. Permit 27-07020 authorized the use 120 cfs described as "a reuse of water already approved under Permit No. 27-07013 and Claim No. 27-04001" for fish propagation purposes. In December of 1977 an IDWR field examiner sent to verify the beneficial use of water developed under the permits measured a total of 81.39 cfs flowing from the source springs through the fish propagation facility. IDWR is directed by statute (§42-219, *Idaho Code*) to issue licenses "which in no case shall be an amount in excess of the amount that has been beneficially applied." The 81.39 cfs measurement is the only one IDWR has available as a basis for the beneficial use findings. If your diversion system had not been changed since 1977, IDWR would have been amenable to another effort to quantify the diversion rate. Unfortunately, I understand this is not possible because your diversion system was lost in the 1997 flooding. If you possess other records of flow measurements made by qualified people before 1997, preferably during or before 1977, I would certainly be willing to take them into account in the licensing process. Otherwise, 81.39 cfs is the amount that will be licensed under the two permits.

The Need for Amendments

IDWR is recommending that Permits 27-07013 and 27-07020 be amended to describe the points of diversion and places of use as they were actually developed. The point of diversion and place of use descriptions authorized on the permits were slightly different than what was actually established. Without the amendments, the licenses cannot include all of the developed points of diversion and places of use, resulting in water rights that are less than they could have been.

Amendment Fees

IDWR is required by statute (§42-221, *Idaho Code*) to collect a fee of \$50.00 for each amendment filed. After reviewing the water right files, however, I think there may be another way of addressing the fee issue than to ask you for another \$100.00.

In March you submitted Application for Extension of Time to Avoid Forfeiture of a Water Right forms and paid \$300.00 in filing fees for Permits 27-07013 and 27-07020 and claim A27-04001A.

IDWR reviewed the forfeiture provisions in the law earlier this summer and was advised by legal counsel that forfeiture does not apply to permits that have not yet been licensed. Therefore, the five-year forfeiture time period for 27-07013 and 27-07020 will not begin until licenses are issued. Assuming that licenses are issued before the end of 1999, extension requests for 27-07013 and 27-07020 would not need to be filed until 2004. Consequently, I recommend withdrawing your extension requests for 27-07013 and 27-07020, applying \$100.00 of your filing fees to the amendments for 27-07013 and 27-07020, and accepting a refund from IDWR of \$100.00. IDWR will review your Application for Extension of Time to Avoid Forfeiture of a Water Right for A27-04001A since it is not a permit.

Recommended Action

If you have information indicating an historical diversion and use of more than 81.39 cfs, please send me a copy so I can determine if the amendment requests should be modified. If you do not intend to submit information concerning the diversion rate, please review and sign the enclosed amendment forms and the extension request withdrawal form. Once the amendments are submitted and the form for withdrawing the extension requests is received, water right licenses can be issued and a refund can be initiated.

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IDWR usually asks for a reply within 30 days so that we can resolve these matters quickly. If you need more than 30 days to respond, or if you have any questions, please call Shelley Keen at 208-327-7946.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman C. Young". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Norman C. Young
Administrator, Water Management Division

Enclosures

Cc: Keith Wilson, IDWR Eastern Region

NCY:sk