



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 27, 2004

Kent Foster
HOLDEN, KIDWELL, HAHN & CRAPO
1000 Riverwalk Drive, Suite 200
PO Box 50130
Idaho Falls, ID 83405

RECEIVED

JUN 01 2004

Department of Water Resources
Southern Region

RE: NOTICE TO RESUME USE FOR WATER RIGHT NO. 41-7030

Dear Mr. Foster:

This letter follows up our phone conversation today and your letter dated May 24, 2004, in connection with resumption of water use under water right no. 41-7030 by your client Tim Deeg ("Deeg").

As I conveyed to you in our phone conversation, the Department considers that forfeiture of a water right is tolled for a right while an adjudication claim for the right is pending and that the five-year period for forfeiture is renewed upon issuance of a partial decree for the right. This position is consistent with the *Memorandum Decision and Order on Challenge and Order of Partial Decree (Wood v. Troutt)*, Subcase No. 65-05663B, In Re SRBA, Case No. 39576, May 2, 2002. I understand that a claim has been filed for this right in the Snake River Basin Adjudication ("SRBA") and is presently pending before the SRBA court.

Mr. Deeg can divert and use water as approved in Transfer Nos. 4268 ("T4268") and 5120 ("T5120") provided the diversion and use is consistent with the conditions of approval including the rate limiter condition shown on T5120. Diversion and use consistent with these transfers, however, does not authorize a total rate of diversion in excess of 6.68 cfs and does not allow Mr. Deeg to divert water at the higher rate he is seeking with the third application for transfer he has filed that is presently pending in the department's Southern Regional office in Twin Falls.

Relative to resumption of use, it seems to me that if the 126 acres authorized for irrigation under T4268 for water right no 41-7030 has been irrigated by Mr. Deeg within the extension of time period, resumption of use has arguably occurred for the right. If not, which water right was used to irrigate the 126 acres?

Even though there appear to be several good arguments that water right no. 41-7030 has not been forfeited through non-use, I think Mr. Deeg probably should

respond in some manner to the Notice to Resume Water Use prior to July 1, 2004. The response would become a part of the department's water right file for 41-7030 and would be available for any needed future reference.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Glen Saxton". The signature is fluid and cursive, with the first name "L." being small and the last name "Saxton" being larger and more prominent.

L. GLEN SAXTON, P.E.
Administrator
Water Management Division

c: Phil Rassier
IDWR - Gary Spackman
IDWR - Regional Office
IDWR - Doug Jones