



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

45-7731
DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

September 23, 2004

RECEIVED

SEP 28 2004

Department of Water Resources
Southern Region

LOVELL J TURNER
863 E 350 N
DECLO ID 83323

Re: Petition for Declaratory Ruling and Motion to Stay in the matter of
Application for Permit Number 36-16125 in the name of Delis Farms, Inc.

Dear Applicant:

The records of the Idaho Department of Water Resources (IDWR) show that you filed an application to appropriate water proposing a new water right in an area where IDWR has restricted new appropriations of water. Your application states that the water use proposed was developed prior to November 1987. IDWR has been considering and approving new applications in restricted areas if the applicant can establish use prior to November of 1987.

On June 1, 2004, the North Side Canal Company and the Twin Falls Canal Company (the canal companies) filed a petition for declaratory relief contesting the processing of pre-November 1987 applications in restricted areas. A copy of the petition and argument is enclosed. The petition was filed in a contested case for another pre-November 1987 application pending before IDWR. The legal questions raised by the petition directly bear on whether your application can be considered by IDWR. As a result, IDWR has held your application until the contested case is resolved.

Because a decision by IDWR in response to the petition may affect the disposition of your application, you should have an opportunity to participate in the contested case proceeding. If you want to participate, you must file a petition to intervene in the contested case. I ask that petitions to intervene be filed with IDWR on or before **October 15, 2004**. The petitions must contain the information required by IDWR's Rules of Procedure. The rules can be found at the following website:
<http://www2.state.id.us/adm/adminrules/rules/idapa37/0101.pdf>

The canal companies attached several lengthy documents to the petition. The full petition with exhibits is 82 pages long. I did not include copies of the exhibits with the petition because of its length. If you want a copy of the full petition, please notify Deborah Gibson of this office, (208) 327-7953, and she will send you a copy.

September 23, 2004

Page 2

Following IDWR's consideration of the petitions to intervene, IDWR will discuss with the parties the procedures for resolution of the canal companies' petition and the entire contested case. I propose to the parties that, because the petition about pre-November 1987 application processing does not raise issues of fact requiring presentation of evidence, and solely raises issues of law, the issue about pre-November 1987 development can be decided by IDWR following submittal of briefs by the parties.

Please call if you have questions.

Sincerely,


Gary Spackman

Encl.

- c. Amy Chestnut, Barker Rosholt & Simpson
Roger Ling, Ling, Robinson & Walker
E. Gail McGarry, Bureau of Reclamation
IDWR Region