



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 14, 2004

Kent Foster
HOLDEN, KIDWELL, HAHN & CRAPO
330 Shoup Ave, 3rd Floor
Idaho Falls, ID 83402

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

Dear Mr. Foster:

This letter follows up our recent phone conversation and your letter dated May 5, 2004, in connection with resumption of water use under water right no. 41-7030 by your client Tim Deeg ("Deeg"). In our phone conversation we generally discussed potential actions to prevent forfeiture allegations relative to this right.

Without going into all the specifics of this matter, on March 21, 1995, the director of the Department issued an Amended Final Order approving Transfer No. 4268 involving water right no. 41-7030. The transfer authorized the diversion and use of 1.4 cfs and 441 acre feet of ground water for the irrigation of 126 acres of land. On July 13, 1999, you filed an Application for Extension of Time to Avoid Forfeiture ("extension request") of this water right stating that "Because of economic problems, applicant has been unable to purchase the equipment necessary to increase the capacity of his well by the 1.4 cfs authorized under this right. Applicant is concerned that the recent preliminary recommendation for this water right would result in the entry of a decree which may be interpreted as a forfeiture of the rate of diversion under this right, which is a leased right."

On January 25, 2000, the department approved the extension request requiring resumption of use on or before July 1, 2004 and on April 2, 2004, sent a Notice to Resume Water Use to Mr. Deeg prompting our phone conversation and your May 5 letter to me.

In our phone conversation, I suggested that Mr. Deeg perhaps could put the water right into the water supply bank in order to stay forfeiture. You advised that Mr. Deeg has irrigated the 126 acres but has not increased the diversion capacity from his well by 1.4 cfs. This arguably could be interpreted to mean that resumption of use has already been accomplished since additional water volume has been diverted and applied to use under terms of the approved transfer even though the diversion rate from the well was not increased. The corollary question then seems to be whether the

right to additional diversion rate can or will be lost, even though additional water volume has been diverted.

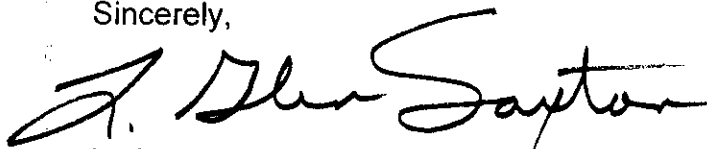
Subsequent transfer 5120 involving water right no. 41-7030 and several other water rights was approved limiting the diversion rate from Mr. Deeg's well to a total of 6.68 cfs. From our phone conversation, I understand that Mr. Deeg has filed a new application for transfer with the department seeking to increase the authorized diversion rate under the water rights to more than 6.68 cfs and that this application is now being reviewed and processed in the department's Twin Falls office.

I understand from you that due to the upcoming resumption of use date for water right 41-7030 and the pending application for transfer seeking enlargement of the 6.68 cfs rate limiting condition, you are seeking means to minimize potential allegations of forfeiture for water right 41-7030.

There does not appear to be a clear-cut option to provide the assurance you are seeking in this matter. After generally discussing this matter with Phil Rassier of this office, however, it appears that Mr. Deeg might want to take the position that he has already resumed use of the right.

Mr. Deeg should respond to the Notice to Resume Water Use in some manner prior to July 1, 2004.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Glen Saxton", written in a cursive style.

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

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