



State of Idaho

DEPARTMENT OF WATER RESOURCES

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NOVEMBER 8, 2007

DON ISOM
3199 W 2200 N
ARCO, ID 83213

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

RE: WATER RIGHTS FOR THE ISOM FARM NEAR ARCO

Dear Mr. Isom:

During our telephone conversation last week, you had asked me to write you a letter regarding the potential to acquire additional water rights for your farm near Arco, ID. We had discussed this issue during our meeting at the Idaho Department of Water Resources (IDWR) office in Boise on Tuesday, September 11, 2007. Since that meeting, I have had the opportunity to discuss your situation at length with other IDWR staff. This letter incorporates the outcome of my discussions with IDWR staff, as well as discussions you and I have had.

During our September 11, 2007 meeting, you indicated your farm requires 20 cubic feet per second (cfs) at the field to adequately irrigate your 1,980-acre farm. Although you hold water rights authorizing diversion of approximately 24 cfs of groundwater and 16 cfs of surface water, the combined impact of conveyance losses, under-producing wells, and junior priority surface water rights has prevented you from realizing the required 20 cfs at the field. Although we discussed several alternatives for bringing more water to your farm, including water right transfers and well replacement, I left the meeting with the impression that you would attempt to improve the yield of your two existing shallow wells nearest to your property (the southern wells), then acquire additional water rights to bring the balance of the 20 cfs to your farm.

Acquisition of additional water rights may prove difficult given that a moratorium on new consumptive use appropriations is currently in place throughout most of the Snake River Basin, including your area. As such, any additional water you require that is not supplied under your existing rights through improvements to your well and distribution system must be obtained through the water bank or by purchasing existing water rights and applying for a transfer to move those rights to your property. However, during our September meeting, we discussed the possibility of applying for a non-consumptive new appropriation to offset conveyance losses.

We had discussed the idea of an application for a permit to divert ground water from your two exchange wells (northern wells) for the purpose of off-setting conveyance losses during delivery of your existing groundwater right. The application could be processed under the moratorium if the appropriation could be considered non-consumptive. The new appropriation was intended to be considered non-consumptive in that the right would be conditioned such that the entire volume of diverted water would return to the aquifer as conveyance losses in the delivery of your existing right.

Further discussions with IDWR staff following our meeting and telephone calls indicated that the above-described new appropriation is not likely to be considered non-consumptive. The reason is that, although the proposed right was intended to be non-consumptive, the new appropriation would result in an increase in consumptive use under your existing right. As such, it is difficult to argue that the application should be processed with the moratorium in place. Also, bear in mind that one of the factors IDWR must consider when approving a new appropriation is whether that new appropriation will cause injury to other water users. Because the proposed appropriation has the net effect of increasing the consumptive use, the potential for injury to other users exists.

As we discussed during our meeting and subsequent phone calls, the moratorium does not prevent you from applying for a non-consumptive irrigation right as described above, but recognize that the chances of successfully acquiring additional water are much better through the other avenues we discussed.

Note also that the moratorium order contains a provision allowing the Director some latitude to process applications for consumptive appropriations under certain circumstances. The provision in the order dated April 30, 1993, reads as follows:

"The moratorium does not prevent the Director from reviewing for approval on a case-by-case basis an application which otherwise would not be approved under the terms of this moratorium if,

- a) Protection and furtherance of the public interest as determined by the Director, requires consideration and approval of the application irrespective of the general drought related moratorium; or*
- b) The Director determined that the development and use of the water pursuant to an application will have no effect on prior surface and ground water rights because of its location, insignificant consumption of water or mitigation provided by the application to offset injury to other rights."*

If you decide to file an application for a new appropriation, please recognize that approval may be difficult and is not guaranteed. If you have further questions, or if I can be of further assistance, please contact me at (208)-287-4956, or contact a water rights agent at IDWR Southern Region at (208)-736-3033.

Sincerely,



Nick Miller
Water Distribution Section