



State of Idaho

## DEPARTMENT OF WATER RESOURCES

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*Eastern*

PHILIP E. BATT  
GOVERNOR

KARL J. DREHER  
DIRECTOR

July 6, 1995

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Department of Water Resources  
Eastern District Office

Kirby A. Jensen  
Rt. 1, Box 50  
Moore, Idaho 83255

Re: In the Matter of Water Right Permit Nos. 34-07096 and 34-07097 in the Name of Mitchell D. Sorensen Subject to an Agreement for Exchange with Decreed Water Right No. 34-10037 in the Name of Kirby Jensen.

Dear Mr. Jensen:

During recent telephone conversations with department staff you have expressed the position that the Watermaster for Water District 34 - Big Lost River should be instructed to discontinue the delivery of water pursuant to the referenced exchange agreement because of the alleged failure of Mr. Sorensen to satisfy the conditions of the exchange.

In a letter dated May 11, 1995, David B. Shaw, Adjudication Bureau Chief for the department, instructed the watermaster as follows regarding delivery of water pursuant to the exchange agreement:

Our interpretation of the exchange is that you should continue to deliver water according to the exchange, that is, the ground water may be used by Mr. Jensen and the surface water may be used by Mr. Sorensen, unless the ground water becomes physically unavailable to Mr. Jensen. If the ground water is physically unavailable to Mr. Jensen you are authorized, upon request, to deliver the surface water to Mr. Jensen. Disputes over payment of the electrical costs for pumping does not make the ground water physically unavailable to Mr. Jensen.

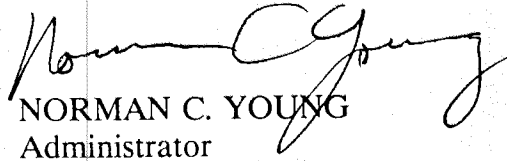
It is my understanding that you presently assert that water is physically unavailable to you because the well is not producing the minimum amount of 170 miner's inches of ground water that you are entitled to under the terms of the exchange agreement.

In order to properly raise this issue before the department it is suggested that you initiate a formal proceeding before the agency by filing a petition setting forth the relief requested in accordance with Rule 230 of the Department's Rules of Procedure. The petition should fully describe the facts relating to the diminished water supply, reference any controlling law as appropriate, state the relief desired, and name and show service upon the respondent as required under Rule 303. A copy of the Department's Rules of Procedure is enclosed for your reference.

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Mr. Sorensen, if served as a respondent to the action will then have an opportunity to answer the allegations of the petition pursuant to Rule 270. If requested, the department may modify the time within which the answer must be filed so that the matter may be addressed in a timely manner.

Sincerely,

  
NORMAN C. YOUNG  
Administrator

Enclosure

cc: Kent W. Foster, Esq.  
Mitchell D. Sorensen  
Doug Rosenkrance  
✓ IDWR Eastern Region