

STATE OF IDAHO
WATER DISTRICT 130
C/O IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380
TELEPHONE NUMBER (208) 736-3033

RECEIVED
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DEPARTMENT OF
WATER RESOURCES

IDWR DIRECTOR
KARL J. DREHER

WATERMASTER
CINDY YENTER

November 15, 2004

DAVID COATS
TRIPLE C CONCRETE
PO BOX 95
RUPERT ID 83350

RE: Consumptive Nature of Use Determination at Triple C Gravel Pits -
Mitigation Plan Required

Dear Mr. Coats:

I have worked with the information you provided to me regarding residual moisture in washed sands and gravels, in order to reach a conclusion regarding the consumptive nature of use at your gravel operation. I have determined that the gravel washing operation must be considered consumptive, because water retained in washed sands and gravels, which will not return to the aquifer, totals about 3600 gallons per day for each day of operation (*see attached calculations*). This is in excess of the *de minimus* limit of 2500 gallons per day.

Because the use of ground water is consumptive, its use must be mitigated in order to allow diversions to continue. Triple C Concrete may be able to form its own mitigation plan, as Triple C holds and controls water rights with Minidoka Irrigation District (MID) which could provide replacement water to the aquifer.

From a discussion with the MID manager, I estimated that deliveries of MID water rights to the gravel pit equaled about 36 acre-feet during the 2004 irrigation season. This is more than sufficient to compensate for consumptive uses of ground water at the wash plant for the entire year, provided the MID water was not also being used for irrigation or other uses.

In order to mitigate ground water diversions under water right nos. 36-8791 and 36-8792, Triple C Concrete must do one of the following:

- Prepare and submit to the Department of Water Resources (DWR), a mitigation plan providing details which document that MID flows can be delivered to the gravel excavation and washing site, and which indicate that the replacement flows can reasonably compensate for consumptive diversions of ground water *in the same year*. (See additional comments below.)
- OR -
- Petition the Magic Valley Ground Water District seeking non-member participation in a mitigation plan, and pay the associated fees to that ground water district.

If an independant mitigation plan is submitted and is not approved, Triple C Concrete will be required to petition the Magic Valley Ground Water District.

11/15/04

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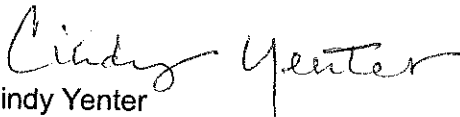
If a mitigation plan is submitted, Triple C will also need to address its use of MID flows as a portion of the supply for the gravel washing operation. The MID water rights are claimed as *irrigation* rights, and do not contain a specific component for commercial or industrial uses. Ordinarily, the incidental or secondary use of irrigation district water for these or other non-irrigation purposes is neither recognized nor regulated, by either DWR or the irrigation district. However, in order that DWR may approve a mitigation plan involving the use of MID shares for a commercial activity, Triple C will need to verify that industrial use is a valid beneficial use under the MID water rights.

I apologize for my delayed response to you, as I realize you now have to make a decision regarding mitigation before the end of the year. Earlier this fall, DWR determined that no water user may be considered delinquent in payment of mitigation assessments (or in approval of mitigation plans) until December 31, 2004. After that time, all water users who are required to mitigate their ground water use and who have not done so, will be deemed in violation of the terms of the 2004 Mitigation Agreement. Those water users will receive a curtailment notice from Water District 130.

Mitigation plans submitted to DWR should be received by December 15 so that they may be reviewed for sufficiency before the end of the year. For specific questions regarding the preparation of mitigation plans, you may contact Gary Spackman at DWR's Boise office, 208-287-4800. If you elect to petition to the Magic Valley Ground Water District, please phone Pam Miller at 208-531-5316.

If you have other questions, please contact me at 208-736-3033.

Regards,



Cindy Yenter
Watermaster
Water District 130

cc: Gary Spackman, IDWR
Magic Valley Ground Water District