



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

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C.L. "BUTCH" OTTER, Governor
GARY SPACKMAN, Interim Director

November 16, 2010

INTERMOUNTAIN SEWER & WATER CORP
C/O LORI GRAVES
SPF WATER ENGINEERING LLC
300 E MALLARD DR STE 350
BOISE ID 83706

Re: Application for Permit No. 61-12256

Dear Lori:

You requested another six months extension for your client to provide additional information requested by the Idaho Department of Water Resources (IDWR) on March 19, 2010. The request is troubling.

Application 63-32225 was approved in early 2007 for a planned community development. The resulting permit required project construction to start within one year from the date of approval and to proceed diligently after that. Some leeway for cause was provided in that standard condition of approval. Although 63-32225 did refer to a related adjacent project in Elmore County, the applicant did not make a case that development of 63-32225 was contingent upon approval of the Elmore County companion project.

Your letter states development approved under permit 63-32225 has been delayed by Elmore County review of the project proposed by application 61-12256. This is despite the fact that the entire 63-32225 project was proposed and approved for diversions and use in Ada County. During IDWR processing of 63-32225, your client made at least an implicit case that development under 63-32225 could and would proceed on its own merits. The same party now argues that additional development in Elmore County is being reviewed in conjunction with already approved development in Ada County, which is why Ada County development has not commenced. The owner wants it both ways: seek and secure approval for Ada County development but use the Elmore County process to justify delays for starting the Ada County work.

Application 61-12256 was filed about one year after approval of 63-32225. Based on the "Ada development depends on Elmore approval" reasoning, it appears the client did not intend to begin development of 63-32225 one year after it was approved.

The Elmore County staff report dated October 18, 2010 concluded the applicant in 61-12256 has not demonstrated several items required for county approval of a planned community including but not limited to the following:

- adequate quantity and quality of ground water for the development
- effect of the development on the ground water resource

- sufficient financing to provide a reliable community water system.

Nonetheless, county staff recommended more time for the applicant to submit the necessary information. Some of this information has also been requested by IDWR.

Despite misgivings for providing more time, IDWR approves your request for six more months to provide the information requested in the March 19 letter. This approval does not resolve the question of compliance with conditions of approval for 63-32225 – that remains for another forum.

This extension of time for 61-12256 is contingent upon the following benchmarks:

- The applicant must submit a plan by **December 31, 2010** explaining what work, if any, has been done to produce the requested information. The plan must also explain how any outstanding information will be produced by the new deadline.
- The applicant must submit a summary of progress in obtaining the requested information by **March 15, 2011**.
- All the requested information is due **May 16, 2011**.
- Failure to comply with any of these deadlines will be cause for the application to be voided without a refund being issued.

Approval of a future request for more time is not likely. Application 61-12256 was filed in January 2008. The new deadline for submitting the requested information represents about 3.5 years from the date of filing. This is more than enough time to provide information clearly required in IDWR Water Appropriation Rules, regardless of when that information is requested by IDWR. This conclusion is based on the fact that rules ratified by the Idaho Legislature have the same force of law as statutes. An applicant must comply with statutes and rules governing the application process, whether informed of this requirement by IDWR or not.

Please let me know if you have any questions. Thank you for your attention to this matter.

Sincerely,



Steve Lester
Water Rights Supervisor