



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N Skyline Drive, Suite A • Idaho Falls ID 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177

Website: idwr.idaho.gov • Email: easterninfo@idwr.idaho.gov

BRAD LITTLE
Governor

GARY SPACKMAN
Director

September 17, 2020

Butte County
PO Box 737
Arco, ID 83213

RE: Application for Transfer 84171

Dear Applicant:

On June 19, 2020, you filed Application for Transfer 84171, proposing to change the point of diversion and place of use for an 11-acre portion of ground water right 34-7226C. You propose to use the transferred portion of the right for irrigation at a recreational site south of Moore. The Department published notice of the application on July 2 and 9, 2020 and no protests were filed against the application.

The Snake River Basin Adjudication Court issued a partial decree for water right 34-7226C in 2002 and issued an amended partial decree for the right on November 30, 2012. Water right 34-7226C currently authorizes the irrigation of 63.3 acres in the SE1/4 of Section 32, T04N, R27E. According to ownership records in the water right file, Butte County acquired the existing place of use for water right 34-7226C in 1998. Therefore, Butte County has owned the existing place of use for the right from the time the amended partial decree was issued (in 2012) until today.

Based on aerial photos and satellite imagery from 2012 to 2020, the existing place of use does not appear to have been farmed or irrigated between 2012 and today. Documents in the water right file show that the existing place of use was originally irrigated using wheel lines. There is no sign of wheel lines or other irrigation infrastructure on the property in any of the aerial photos from 2012 to today.

As part of its review of a transfer application, the Department must confirm that the water right proposed to be changed is a valid water right and has not been lost and forfeited through non-use. Given the evidence available to the Department at this time, water right 34-7226C was not diverted for irrigation between 2013 and 2019 and appears to have been lost and forfeited for non-use. I realize, however, that there may be more evidence than just aerial photos and satellite imagery. You might have additional information about irrigation occurring at the existing place of use that would lead to a different conclusion. Please provide any evidence you have showing that water right 34-7226C has been diverted for irrigation of the existing place of use in the last eight years. Please include specific details about the extent of irrigation, the time period of diversion and the methods used to irrigate the existing place of use.

If water right 34-7226C has not been used for irrigation since the amended partial decree was issued in 2012, perhaps there are defenses or exceptions to forfeiture that would excuse the non-use. Idaho Code § 42-223 sets forth a number of exceptions or defenses to forfeiture. In addition, there may be common law defenses to forfeiture that could apply to your situation. If you are asserting defenses or exceptions to forfeiture, please identify those defenses or exceptions and explain why you believe they apply to the non-use of water right 34-7226C.

Please provide evidence of irrigation or a summary of your defenses to forfeiture on or before October 30, 2020. If you do not respond to this request by October 30th, I will assume that you do not have any additional evidence of irrigation at the existing place of use and that you do not assert any defenses to forfeiture. Feel free to contact me you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'J Cefalo', written in a cursive style.

James Cefalo
208-525-7161

Cc: Young Harvey Walker
2338 N 2930 W
Arco, ID 83213