

Cefalo, James

From: Randy Budge <randy@racineolson.com>
Sent: Wednesday, January 15, 2020 2:53 PM
To: Cefalo, James
Cc: Ernie Carlsen; Randy Budge
Subject: Draft Transfer Approval for Fish Haven Water Users Co.

James,

After further reviewing the Transfer approval conditions and discussing them with Ernie, most appear reasonable except for these suggested changes:

- (1) The conditions of approval appear reasonable except for Nos. 11 and 13. No. 13 may not be necessary given the wording found in Condition 3, which states: "The record for this water right will be changed to show the specific rate and acres permanently removed from irrigation use at the time the Department conducts a licensing review for Permit 11-7847."
- (2) It is highly likely FHPC will request an extension of time for an additional five years (and perhaps more if warranted) to file proof of beneficial use on permit 11-7847. As such the action referenced in No. 3 won't happen for at least ten years, well beyond the time designated in Condition 13. If Condition 13 is unnecessary and removed it takes care of this problem. If not the 5 year limit needs to be changed with the time frame tied to the term of the permit as it now exists or may be extended.
- (3) Since there is no land list for irrigation on the Transfer application, replacing "above" at the end of Condition 11 with "served by Fish Haven Water Users Company" is a more specific description of the irrigation place of use.

Let me know if you have questions or wish to further discuss. If these revisions are acceptable then we are good to go.

Thanks!

Randy

Randall C. Budge
Attorney



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**STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES**

12/31/19 Draft

**TRANSFER OF WATER RIGHT
TRANSFER NO. 83767**

This is to certify that: FISH HAVEN WATER USERS CO
C/O DAVID COTTLE
2629 HWY 89
FISH HAVEN, ID 83287

has requested a change to the water right(s) listed below. This change in water right(s) is authorized pursuant to the provisions of Section 42-222, Idaho Code. A summary of the changes is also listed below. The authorized change for each affected water right, including conditions of approval, is shown on the following pages of this document.

Summary of Water Rights Before the Proposed Changes

<u>Water Right</u>	<u>Origin/Basis</u>	<u>Priority Date</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>Source</u>
11-4022	WR/STATUTORY CLAIM	5/18/1871	29.600 cfs	N/A	N/A	1212.0	FISH HAVEN CREEK, SPRING

Purpose of Transfer (Changes Proposed)

<u>Current Number</u>	<u>Split</u>	<u>POD</u>	<u>POU</u>	<u>Add POD</u>	<u>Period of Use</u>	<u>Nature of Use</u>
11-4022	NO	NO	YES	NO	YES	YES

Summary Of Water Rights After the Approved Change

<u>Existing Right</u>	<u>New No. (Changed Portion)</u>	<u>Transfer Rate</u>	<u>Transfer Volume</u>	<u>Acre Limit</u>	<u>Total Acres</u>	<u>New No. (remaining portion)</u>	<u>Remaining Rate</u>	<u>Remaining Volume</u>	<u>Remaining Acre Limit</u>	<u>Remaining Total Acres</u>
11-4022	11-4022	29.600 cfs	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
COMBINED TOTALS		29.600 cfs	N/A	N/A	N/A		N/A	N/A	N/A	N/A

This water right(s) is subject to all prior water rights and shall be administered in accordance with Idaho law and applicable rules of the Department of Water Resources. Detailed Water Right Description(s) attached.

Dated this _____ day of _____,

Regional Manager

Transfer No. 83767

WATER RIGHT NO. 11-4022
As Modified by Transfer No. 83767

In accordance with the approval of Transfer No. 83767, Water Right No. 11-4022 is now described as follows:

Right Holder: FISH HAVEN WATER USERS CO
C/O DAVID COTTLE
2629 HWY 89
FISH HAVEN, ID 83287

Priority Date: 5/18/1871

Source: FISH HAVEN CREEK
Source: SPRING

Tributary: BEAR LAKE
Tributary: FISH HAVEN CREEK

<u>BENEFICIAL USE</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Diversion Volume</u>
IRRIGATION	04/15	to 10/31	27.650 cfs	
MUNICIPAL	04/15	to 10/31	1.950 cfs	110.0 af
MITIGATION	04/15	to 10/31	4.510 cfs	
MITIGATION	04/15	to 10/31	2.310 cfs	130.4 af
MUNICIPAL	04/15	to 10/31	2.310 cfs	130.4 af
			29.600 cfs	

LOCATION OF POINT(S) OF DIVERSION

FISH HAVEN CREEK	NWSW	Sec 14 Twp 16S Rge 43E	BEAR LAKE County
FISH HAVEN CREEK	NWNESE	Sec 15 Twp 16S Rge 43E	BEAR LAKE County
FISH HAVEN CREEK	NENWSE	Sec 15 Twp 16S Rge 43E	BEAR LAKE County
FISH HAVEN CREEK	SWNWNE	Sec 16 Twp 16S Rge 43E	BEAR LAKE County
SPRING	SWNWNE	Sec 16 Twp 16S Rge 43E	BEAR LAKE County
FISH HAVEN CREEK	NWSFNE	Sec 16 Twp 16S Rge 43E	BEAR LAKE County

PLACE OF USE: MITIGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
16S	43E	14														X			
																L 3			0

CONDITIONS OF APPROVAL

- Transfers 72318 and 79903 authorize a portion of water right 11-4022 for mitigation use in the maximum amount of 4.51 cfs and 184.7 irrigated acres. Irrigation use under this right will be reduced proportionately to the mitigation use associated with the domestic and commercial uses of Permits 11-7481, 11-7491 and 11-7796 during the development period of the Permits. The official record for this water right will be changed upon determination of the extent of beneficial use developed and subsequently licensed under Permits 11-7481, 11-7491, and 11-7796 to show the specific rate and acres permanently removed from irrigation use that will be dedicated solely to mitigation use.

Transfer No. 83767

WATER RIGHT NO. 11-4022

As Modified by Transfer No. 83767

CONDITIONS OF APPROVAL

2. Mitigation use under this right for water rights 11-7481, 11-7491 and 11-7796 is subject to the continued adherence to the provisions of the water management and operation plan required under those water rights.
3. Transfer 83767 authorizes a portion of this water right (2.31 cfs. 130.4 afa) to be used to supply municipal water and/or mitigate for future development of up to 100 connections within the Fish Haven Pipeline Company system. Irrigation use under this right will be reduced proportionately to the municipal/mitigation use developed within the Fish Haven Pipeline Company system. The record for this water right will be changed to show the specific rate and acres permanently removed from irrigation use at the time the Department conducts a licensing review for Permit 11-7847.
4. Water associated with the mitigation use will continue to be diverted into the Fish Haven Water Users Company's delivery system, however the portion identified for mitigation purposes shall be conveyed to Bear Lake, and irrigation use under this right shall be proportionately reduced.
5. Municipal place of use is within the area served by the public water supply system of Fish Haven Pipeline Company and is generally located within Sections 14, 15, 22, 23 and 27, T16S, R43E.
6. Irrigation place of use is within the area served by Fish Haven Water Users Company.
7. The boundaries encompassing the irrigation and municipal places of use for this water right are described with digital boundaries as authorized by Idaho law. The data comprising the digital boundaries are stored in the electronic document management system of the Department and are incorporated into this approval by this reference.
8. A map generally depicting the municipal and irrigation service areas for this water right at the time of this approval is attached to this document for illustrative purposes.
9. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 11.
10. The right holder shall maintain a measuring device and lockable controlling works of a type approved by the Department in a manner that will provide the watermaster suitable control of the diversion(s).
11. This right when combined with all other rights shall provide no more than 3.5 afa per acre at the field headgate for irrigation of the lands above.
12. Approval of this transfer does not confirm the validity of this water right.
13. The right holder shall accomplish the change authorized by this transfer within five years of the date of this approval.
14. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.

Cefalo, James

From: Cefalo, James
Sent: Tuesday, December 31, 2019 11:03 AM
To: 'Randy Budge'
Subject: Draft Transfer Approval for Fish Haven Water Users Co.
Attachments: Draft Transfer 83767.pdf

Randy,

I hope you enjoyed the holiday season and wish you a happy and successful new year.

The Fish Haven transfer application came out of the protest period last Monday. We did not receive any protests. I've spent some time this week reviewing the application file. Attached is a draft transfer approval. Please let me know if you have any concerns or notice any errors.

Please note that the season of use for all of the elements of the water right continues to be the original irrigation season of use (4/15 – 10/31). We are not able to expand the season of use for a surface water right to cover the entire year. An enlargement of the season of use would have a direct impact on downstream water rights used to store water in Bear Lake. The Fish Haven Pipeline Company's statutory claim 11-4270 (4.0 cfs) describes year round use and should be sufficient to cover the use occurring during the non-irrigation season.

Previous transfer approvals for water right 11-4022 did not define a place of use for Mitigation. I went ahead and identified the mitigation place of use as the location where Fish Haven Creek flows into Bear Lake. The FHPC future connections will mitigate, if needed, by sending a quantity of water to Bear Lake. The Sam's Hollow development mitigates in the same way.

The irrigation and municipal uses are described by a digital boundary (service area) and will not have a tabular place of use.

James Cefalo
Regional Manager
IDWR Eastern Region
(208) 525-7161