

## Stosich, Scott

---

**From:** Rob Harris <rharris@holdenlegal.com>  
**Sent:** Tuesday, November 26, 2019 4:25 PM  
**To:** Stosich, Scott  
**Cc:** John Bender  
**Subject:** RE: Transfer Application for John & Deborah Bender Trust (WR's 35-2420, 35-7768, 35-11213)  
**Attachments:** Bender.2011 Photo.pdf

Scott:

The attached map shows the shapes over a 2011 Google image.

Thanks,

Rob Harris

**From:** Rob Harris  
**Sent:** Tuesday, November 26, 2019 4:12 PM  
**To:** Stosich, Scott <Scott.Stosich@idwr.idaho.gov>  
**Subject:** RE: Transfer Application for John & Deborah Bender Trust (WR's 35-2420, 35-7768, 35-11213)

Scott:

I received your letter on the Bender Trust transfer requesting additional information on irrigation of the acres that are proposed to be moved.

First, attached is an aerial photo from 2011 that shows the corners being irrigated. Second, the property is subject to the oversight of the Bingham Ground Water District, and in 2015, a mitigation agreement was entered into where water users were required to reduce their pumping down from historic levels. Based on Idaho Code section 42-223, non-irrigation of acres from 2015 until now is a defense to forfeiture because the non-irrigation resulted from approval of a mitigation plan.

This year, in 2019, the tenant on the property, Karl Cook, did irrigate the corners with handlines until they were asked by the ground water district to stop their pumping because they were approaching the diversion volume they were restricted to.

For all of the above reasons, non-irrigation of acres and forfeiture should not be a concern.

I am in the process of georeferencing a map that shows the 2011 image with the place of use shapefiles. I will get that emailed to you today.

Let me know if you have any questions.

Thanks,

## Stosich, Scott

---

**From:** Rob Harris <rharris@holdenlegal.com>  
**Sent:** Friday, November 08, 2019 3:47 PM  
**To:** Stosich, Scott  
**Subject:** Transfer Application for John & Deborah Bender Trust  
**Attachments:** Revised POU.dbf; Revised POU.prj; Revised POU.sbn; Revised POU.sbx; Revised POU.shp; Revised POU.shp.xml; Revised POU.shx; Revised POU.CPG

Scott:

I received your letter on the Bender transfer, and realized that I did not send you the shapefile. I apologize for my delay. The shapefile is attached.

As to the 23 acres that we are trying to rearrange that your letter indicates may be forfeited, I will respond in a separate email.

Thanks,

Rob Harris

**To:** Rob Harris <rharris@holdenlegal.com>

**Subject:** Transfer Application for John & Deborah Bender Trust (WR's 35-2420, 35-7768, 35-11213)

Mr. Rob Harris,

I am currently reviewing and preparing the proposed changes submitted with the transfer application for the John & Deborah Bender Trust. If you could send me the shapefiles associated with the proposed changes, that would be great.

Also, let me know if you have any questions about the application.

Thanks,

**Scott Stosich**

Water Resource Agent

Department of Water Resources-Eastern Region

(208) 525-7161

[Scott.Stosich@idwr.idaho.gov](mailto:Scott.Stosich@idwr.idaho.gov)



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](http://idwr.idaho.gov) • Email: [easterninfo@idwr.idaho.gov](mailto:easterninfo@idwr.idaho.gov)

BRAD LITTLE  
Governor

October 30, 2019

GARY SPACKMAN  
Director

Robert L. Harris  
Holden, Kidwell, Hain & Crapo, P.L.L.C.  
P.O. Box 50130  
Idaho Falls, ID 83405

RE: Application for Transfer of Water Rights 35-2420, 35-7768, 35-11213 and 35-926

Mr. Robert L. Harris:

I am currently in the process of reviewing the transfer application submitted for the John & Deborah Bender Trust, which proposes to change the place of use for the above mentioned water rights.

One of the focuses of the initial review is ensuring that the water rights proposed to be changed have been beneficially used in their entirety, and are not subject to forfeiture. After reviewing aerial photography of the 23 acres proposed to be dried up, it appears that no irrigation has occurred on those acres since the 1990's. In order to proceed with the transfer, please submit proof of irrigation on the acres to be dried up, or an alternative form evidence of beneficial use, within 30 days of this letter or by **December 1, 2019**.

If the requested information is not received by December 1, 2019, the transfer application, along with any fees submitted, will be returned to the above address.

Please let me know if you have any questions or concerns.

Best Regards,

Scott Stosich  
Water Rights Agent  
(208) 525-7161  
[scott.stosich@idwr.idaho.gov](mailto:scott.stosich@idwr.idaho.gov)