



State of Idaho

DEPARTMENT OF WATER RESOURCES

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BRAD LITTLE
Governor

GARY SPACKMAN
Director

June 13, 2019

KIMBERLY L WILLIAMS
WILLIAMS MESERVY & LARSEN LLP
PO BOX 168
JEROME ID 83338-0168

Re: Water Right Transfer No. 83001

Dear Ms. Williams:

On April 1, 2019, the Idaho Department of Water Resources ("IDWR") received a letter from you about water right transfer 83001 ("Transfer"). The letter was written on behalf of your clients, James and Diane Meeks ("Meeks"). The letter requested that IDWR void the preliminary order approving the Transfer "pursuant to IDAPA 37.03.08.050.08" because the applicants, Sergio Arroyo Jr. and Julie DeWolfe Arroyo ("Arroyos"), "deliberately submitted false and misleading information on the application and supporting documents."

The Arroyos applied for the Transfer on February 8, 2019. The Transfer proposed changing the point of diversion, place of use, and ownership of water right 36-14604. Water right 36-14604 was decreed to F. Roy Dobson and Sharon K. Dobson in the Snake River Basin Adjudication on December 13, 1996. According to the partial decree for the right, the point of diversion was in the NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 21, Township 08 South, Range 18 East, B.M., and the place of use for both the domestic and stock water uses was in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 08 South, Range 18 East, B.M. The partial decree also stated that the domestic use was for "1 home." Meeks Family Limited Partnership notified IDWR of its ownership of water right 36-14604 in 2006.

The Transfer proposed changing the authorized point of diversion for right 36-14604 to an existing well in the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 08 South, Range 18 East, B.M., a few hundred feet from the decreed point of diversion. The Transfer proposed changing the place of use to include both the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 08 South, Range 18 East, B.M., because the quarter-quarter line separating the SE $\frac{1}{4}$ SE $\frac{1}{4}$ and the SW $\frac{1}{4}$ SE $\frac{1}{4}$ intersects the Arroyos' home. In addition, the Transfer updated the ownership of water right 36-14604 to reflect the Arroyos as the current owner of the right based on deeds showing the chain of title for the authorized place of use from the Meeks through multiple other owners to the Arroyos.

Idaho Code § 42-222 authorizes IDWR to approve a change in the point of diversion and place of use of a water right. For changes in point of diversion or place of use that will not change the effect on the water source of the right and any other hydraulically connected sources and will not affect the water rights of others, IDWR is not required to publish notice of the

transfer application. The Transfer met the criteria for not providing general notice of the proposed changes. The proposed change in point of diversion was no more than a few hundred feet within the Eastern Snake Plain Aquifer ("ESPA"). The proposed point of diversion was located within the same ESPA groundwater model cell (one mile x one mile), so modeling the proposed change would show the same impacts to hydraulically connected reaches of the Snake River at the pre- and post-transfer locations. In addition, the general direction (northeast) of the proposed change in point of diversion was away from the closest residences that may have domestic wells that could be impacted by the Transfer. The proposed change in place of use was not a change in physical location compared to the historical use. Rather, the Transfer more accurately describe the location of the historical domestic use because the home is actually located in both the SE¼SE¼ and the SW¼SE¼ of Section 16, Township 08 South, Range 18 East., B.M.

The Transfer also met the criteria in Idaho Code § 42-222 for approving a transfer – i. e., no indication in the record that other water rights would be injured, the change is not an enlargement in use of the right, the change is consistent with the conservation of water resources in Idaho, and the change does not conflict with the local public interest as defined in Idaho Code § 42-202B. As a result, IDWR approved the Transfer on February 20, 2019, and served notice of the approval by mail on February 21, 2019.

IDWR approved the Transfer by issuing a preliminary order pursuant to Rule 730 of IDWR's Rules of Procedure (IDAPA 37.01.01). Rule 730.02 requires parties objecting to the order to file a petition for reconsideration to the signing officer or exceptions to the Director within 14 days of the service date of the order. Alternatively, a hearing can be requested pursuant to Idaho Code § 42-1701A within 15 days after receipt of notice of the action. Since no petitions or exceptions were filed and no hearing was requested, and the preliminary order became a final order of the agency on March 7, 2019. Pursuant to Rules 730.02.f-g, any party aggrieved by the final order may appeal to district court within 28 days of the preliminary order becoming final. The 28-day deadline for appeal to district court was April 4, 2019.

The rule cited in your request for IDWR to void approval of the transfer, IDAPA 37.03.08.050.08, is a Water Appropriation Rule, which does not apply to water right transfers. IDWR does not have rules for transfers similar to the Water Appropriation Rules, and IDWR's Rules of Procedure (IDAPA 37.01.01) do not specifically address allegations of false or misleading information submitted to IDWR after an order has become final.

Your letter describes concerns relating to private agreements between your clients and former owners of the Arroyos' land. The letter also states that "the Arroyos filed an Application for Transfer of water right 36-14604 seeking to effectively nullify the two Agreements" and "changing the place of use to no longer include the Meeks property where the cattle have historically been watered." You attached copies of two agreements to your letter.

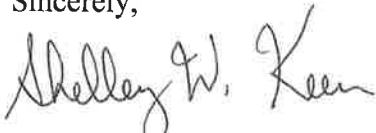
Before approving the Transfer, IDWR had no knowledge of the agreements. If it had the agreements, IDWR's analysis of the Transfer would likely have been the same. The agreements are civil arrangements between parties. They do not establish water rights that IDWR has the duty or legal authority to enforce. See Idaho Code § 42-201. Neither agreement specifically

references water right 36-14604. One of the agreements, Jerome County Instrument #2037467, addresses access by Meeks to a domestic well for stock watering purposes. Because the agreement has no reference to water right 36-14604, it is not clear whether the referenced well is the decreed point of diversion for water right 36-14604 or whether the referenced stock watering is pursuant to right 36-14604. According to the April 15, 2019, letter IDWR received from the Arroyos' attorney, Mark Guerry, the validity of the agreement is in question. Whether Arroyos can deny access to the well referenced in the agreement is not within the purview of IDWR's transfer application review process.

The other agreement, Jerome County Instrument #2037467, does not appear to relate to domestic or stock water use, so there seems to be no connection at all to water right 36-14604.

As for the "changing the place of use . . . where the cattle have historically been watered," the transfer did not remove any portion of the authorized place of use; it added the SW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 16, Township 08 South, Range 18 East, B.M., to reflect the actual location of the Arroyos' home.

Sincerely,

A handwritten signature in cursive script that reads "Shelley W. Keen".

Shelley W. Keen, Chief
Water Allocation Bureau

cc: James & Diane Meeks
Mark Guerry
Sergio & Julie Arroyo
Corey Skinner, IDWR Southern Region