



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER - Governor
Gary Spackman - IDWR Director

February 3, 2017

Earl and Mary Roberts
1387 E 1800 S
Preston, ID 83263

RE: Application for Transfer 81026 (Water Right 13-7940)

Dear Applicants:

In June 2016, you filed Application for Transfer No. 81026, proposing to change the point of diversion for water right 13-7940. According to the application, the legal description for the spring identified on water right 13-7940 is in error. Your application proposes to change the authorized point of diversion to the NESESW of Section 12, T16S, R40E, onto property owned by the James and Kathy Allen Revocable Trust ("Allen Trust"). The proposed spring source is on property owned by the Allen Trust.

If a transfer application proposes changing a point of diversion onto property not owned by an applicant, the applicant must demonstrate a legal right to access the proposed point of diversion site before the Department can approve the transfer. Question 6(b) of the transfer application form states: "[D]escribe the arrangement enabling [you] to access the property for the diversion system." Your response to this question does not "describe the arrangement" with the Allen Trust to access the property at the proposed point of diversion. Your response to the questions was: "This transfer seeks to fix a licensing error. The Point of diversion has always been in the NESESW."

Because I was concerned that you did not have legal access to the spring, in August 2016, I contacted James Allen to discuss the location of the spring and the question of access. Mr. Allen mentioned that the location of the spring in relation to the property boundary was settled a number of years ago. If Application 13-7940 (filed by Margaret Gessel in April 2015) truly intended to access the spring on the Allen Trust property, it appears Ms. Gessel may have intentionally listed an incorrect location for the spring, possibly to avoid having to demonstrate legal access to the Allen Trust property at the time Application 13-7940 was filed.

Whether Application 13-7940 was filed with misinformation makes very little difference to the situation at hand. Currently, water right 13-7940 is not associated with the spring on the Allen Trust property. Therefore, you do not have any right to divert water from that spring. Application 81026 seeks to move water right 13-7940 to the spring. However, Application 81026 can only be approved if you provide evidence demonstrating legal access to the Allen Trust property.

During my conversation with Mr. Allen, he stated that he is open to negotiating an easement which would allow you to access the spring. It is my understanding that you have had discussions with Mr. Allen, or his attorney, about an easement for a pipeline to the spring.

Application 81026 has been pending before the Department for over six months. Continuing to hold the application does not make it any more likely that an easement will be created. Therefore, it is appropriate to set a deadline to bring Application 81026 to a final resolution. One month should be sufficient time to obtain an easement from the Allen Trust, if one can be obtained. Please provide evidence demonstrating legal access to the proposed spring source on or before March 17, 2017. If the requested evidence is not provided by that date, I will move forward with an order rejecting Application 82016. Thank you for your willingness to address the access issue.

Sincerely,

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

James Cefalo

Cc: Allen Revocable Trust, 5658 E Maple Creek Road, Franklin, ID 83237
Randy Budge, Racine Olson Attorneys, PO Box 1391, Pocatello, ID 83204