



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

December 6, 2016

Greg Sullivan
Brockway Engineering PLLC
2016 North Washington St, Suite 4
Twin Falls, ID 83301

RE: Applications for Transfer (Global Ag Properties II USA LLC)

Dear Mr. Sullivan:

On November 21, 2016, you filed three transfer applications in the name of Global Ag Properties II USA ("Global Ag"), seeking to move portions of ground water right 35-7168 to three different farms. Based on the information available to the Department at this time, it appears these applications will result in an enlargement of water rights. This letter is meant to summarize my concerns with the proposed changes and give you an opportunity to provide additional information.

On February 15, 2002, the SRBA court issued a partial decree for ground water right 35-7168 in the name of Robert Shawver. The water right authorizes the irrigation of 225 acres in the E1/2 of the NE1/4 of Section 12, T03S, R33E and the NW1/4 of Section 7, T03S, R34E. As part of the transfer applications, you provided a copy of a deed confirming that Shawver conveyed the property at the existing place of use to Global Ag in 2016. The conveyance specifically included water right 35-7168

Water right 35-7168 is diverted from a well located in the NWNW of Section 7, T03S, R34E. The Department has designated the well as WMIS #500888 for the purpose of tracking annual diversion data for the well.

The existing place of use is within the service area of Peoples Canal & Irrigation Co. ("Peoples Canal"). As you know, Peoples Canal delivers surface water from the Snake River to its shareholders (15,222 total acres). We recently contacted Peoples Canal about the number of shares appurtenant to the existing place of use. Peoples Canal reported that there are 225 shares appurtenant to the property. One share in Peoples Canal is sufficient to irrigate one acre. The surface shares on the property match the ground water right acres exactly.

Although the property is covered by ground water right 35-7168 and surface water rights from the Snake River, measurement records indicate that Shawver has relied heavily, if not exclusively, on his ground water right for irrigation of the property. WMIS records show Shawver diverted approximately 380 acre-feet per year from his well, on average, between 2005 and 2015. This equates to 1.7 acre-feet per acre.

The diversion records for WMIS #500888 indicate that water right 35-7168 has been used as a primary right to irrigate the existing place of use. There are no conditions on water right 35-7168 requiring the right holder to divert surface water first or to limit diversion of ground water to supplemental use only. Therefore, water right 35-7168 can be used as a primary right at the existing place of use and at the proposed place of use.

Sorting out the question of primary use versus supplemental use is not the end of the enlargement inquiry. The transfers propose to unstack the surface and ground water rights, move ground water right 35-7168 to new acres, and continue irrigating the existing place of use with surface water rights. This unstacking of water rights would constitute an enlargement of the water rights.

Idaho Code § 42-222 authorizes the Department to reject transfer applications which would result in an enlargement of the original rights. In this case, unstacking the surface and ground water rights and irrigating 450 acres (when only 225 acres have historically been irrigated by these stacked rights) is an enlargement of use.

If you choose to proceed with the transfers, as filed, the water rights held by Peoples Canal must be added to the transfer application (as associated rights) and the company's water rights must be reduced by 225 acres. I cannot make changes to the Peoples Canal water rights without the company's authorization. Therefore, if Peoples Canal is not willing to have its water rights reduced by 225 acres, the Department may not be able to approve the proposed transfers.

Another option would be to move a proportional number of Peoples Canal shares to the proposed places of use and dry up the acres entirely at the existing place of use. This also prevents enlargement of the original rights. However, the proposed places of use are well outside the service area of Peoples Canal. If you choose this option, I would need a letter from Peoples Canal authorizing the shares to be moved outside of its current service boundary.

Please advise how you would like to proceed with these transfers by January 8, 2017. If you choose to proceed with the transfer as filed, please provide a letter from Peoples Canal authorizing the 225-acre reduction and identifying the acres to be removed from the company's service area. In the alternative, please provide a letter from Peoples Canal authorizing 225 shares to be moved outside of the existing service area to the places of use described in your transfer applications. If neither of these is provided, I will process the transfer applications, as filed, and take the necessary steps to reject the applications based on enlargement concerns.

During our initial review of the applications, there were a few other issues that need to be addressed before the applications can be processed:

1. Please provide evidence that Skye Root is authorized to sign on behalf of Global Ag.

2. The map on the application for 21.9 acres needs to be updated to show all of the proposed points of diversion.

3. The application for 21.9 acres states that the proposed place of use is owned by Global Ag. Bingham County taxlot records (June 2016) list PEP LLC as the current owner of the property. If Global Ag has purchased this property since June 2016, please provide proof of ownership of the proposed POU. Otherwise, provide authorization from PEP LLC to move the ground water right to that property.

4. The application for 183.9 acres states that Global Ag owns the proposed place of use. Bingham County taxlot records (June 2016) list PEP LLC as the current owner of the N1/2 of the NW1/4 of Section 33. If Global Ag has purchased this property since June 2016, please provide proof of ownership of the proposed POU. Otherwise, provide authorization from PEP LLC to move the ground water right to that property.

5. Provide authorization for any points of diversion that aren't on property owned by Global Ag.

Feel free to contact me if you would like to discuss the enlargement concerns or the options described above in greater detail.

Sincerely,



James Cefalo

Cc: Global Ag Properties II USA LLC
c/o Skye Root
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Champlain, IL 61820

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Blackfoot, ID 83221