

Mathews, Kerrie

From: Todd Perkes [watermaster34@atcnet.net]
Sent: Monday, September 08, 2014 11:15 AM
To: Mathews, Kerrie
Subject: Ron Brown water inspection

Kerrie,

As the watermaster of district 34 I went to Ron Brown's property on September 8, 2014 for an inspection to see if he has watered his property this year. He has irrigated trees, lawn and other grasses. There is irrigation hoses and automatic valves controlling the flow. Ron turn the water on to show me that it works. I think that there has been an attempt to use his ground water to irrigate the 5.8 acres.

Todd Perkes,
Watermaster, District 34



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AUG 20 2014

Department of Water Resources
Eastern Region

August 18, 2014

Kerrie Mathews
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Magee Family Trust

Dear Mrs. Mathews:

I received your letter regarding the transfer of water right 34-2294 dated August 11, 2014. I can confirm that irrigation under 34-2294 has been limited for the past several years. Ronald Brown has been irrigating the property through out the 2014 irrigation season. A request has been made for the watermaster for Basin 34 to perform a site visit and confirm that irrigation is occurring this year.

Additionally, 34-2294 was decreed in the SRBA April 18, 2008. Based on the IDWR Administrative Memorandum Regarding: Forfeiture Review Period, a water right holder has until the end of the 5th year to resume use of a water right or initiate a defense to forfeiture. The water right in 2008 is considered protected since the decree was issued during that year. The end of the calendar year of 2014 will be the end of the 5th year.

Because irrigation has resumed and the transfer has been submitted during the 2014 calendar year. There should be no reason why this transfer cannot be processed and approved by IDWR.

Please continue to process the transfer and let me know if IDWR has any questions that I can help with.

Sincerely,

Greg Sullivan, M.S., Engineer

Cc: Fran Magee

Enc: Forfeiture Review Period Memo, Watermaster Comment

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Department of Water Resources
Eastern Region

ADMINISTRATOR'S MEMORANDUM

Multiple Programs Memo No. 2

To: Regional Offices
Water Allocation Bureau

From: Gary Spackman 

Re: **FORFEITURE REVIEW PERIOD**

Date: March 5, 2012

Idaho Code § 42-222(2) provides that all rights to the use of water shall be lost and forfeited by a failure for the term of five years to apply it to the beneficial use for which it was appropriated. Idaho Code § 42-222(3&4) provides that the Department may grant an extension for an additional five years for good cause shown if an application for extension is made before the end of the five year period. Idaho Code § 42-223 provides for exceptions or defenses to forfeiture. Experience in the Snake River Basin Adjudication (SRBA) and other court cases have provided additional guidance on the subject of forfeiture. In general, forfeiture is not favored; however, the Department has a responsibility to review water rights to determine if forfeiture has occurred prior to approving (or denying) certain applications affecting existing water rights.

In 1999, the SRBA court issued a decision tolling the forfeiture period for a water right during the time period that a claim is pending in the adjudication. The Department has presumed that water rights are not forfeited for non-use during the five-year period following issuance of a partial decree. For many water rights decreed in the SRBA, the initial five-year period has ended or will end soon, and Department employees are increasingly faced with questions regarding a cut-off date to determine if forfeiture has occurred and when action must be taken to protect a water right from forfeiture. For example, if a partial decree is issued during the middle of the irrigation season, is it appropriate to assume that five full irrigation seasons of non-use (in addition to the first partial season) must pass before the right is considered to be forfeited? If so, would the right holder need to initiate some action to protect the right from forfeiture prior to the end of the five full seasons, or prior to the beginning of the sixth irrigation season, or some other time? In the past, the Department has presumed that resumption at the beginning of the sixth season would prevent forfeiture on the basis that junior irrigation rights would not have had opportunity to establish some reliance on the unused water during the non-irrigation season. What if the need for irrigation water is further delayed in the sixth season due to a wet spring?

The purpose of this memo is to address the timing questions that arise during forfeiture review by providing Department employees with a simple and uniform forfeiture review period. This memo applies to forfeiture review associated with applications to lease a water right to the Water Supply Bank, applications for extension of time to avoid forfeiture, and applications for transfer of a water right. This memo applies to both irrigation and non-irrigation water rights.

The Department will presume that beneficial use under a water right during a portion of a calendar year or any defense or protection from forfeiture applicable during a portion of a calendar year will apply to the entire calendar year. For example, if an irrigation right is used to establish a cover crop at the beginning of an irrigation season and is not used during the remainder of the irrigation season; the right will be considered protected from forfeiture through December 31 of that calendar year. Likewise, if an irrigation right is decreed at the beginning of a calendar year (prior to the beginning of the irrigation season) and is not used at any time during the irrigation season, the right will still be considered protected from forfeiture for that entire calendar year.

The Department will also presume that resumption of beneficial use under a water right for a portion of a calendar year or any defense or protection initiated during a calendar year will apply to the entire calendar year. For example, if an irrigation right is used to establish a fall crop at the end of an irrigation season, even if the right was not used earlier during the irrigation season, the right will be considered protected from forfeiture for that calendar year. Likewise, if an application for lease to the Water Supply Bank is submitted before the end of a calendar year and eventually approved and the right is not used at any time during that calendar year, the right will be considered protected from forfeiture for that calendar year.

Strict application of Idaho Code § 42-222(4) would require an application for extension of time to avoid forfeiture to be submitted prior to the end of the fifth unprotected year of non-use. However, the Department wishes to avoid questions and conflicts surrounding the timing of resumption during an irrigation season and to maintain simple and uniform guidance to Department employees. Therefore, the Department will presume that resumption of beneficial use or any defense or protection, including filing an extension of time to avoid forfeiture, initiated before the end of the sixth calendar year will prevent a finding of forfeiture by the Department.

As an example, if an irrigation right is decreed in the SRBA in January, 2004 and water is not used during 2004, 2005, 2006, 2007, 2008 and 2009, then resumption or action initiating a defense or protection from forfeiture must occur prior to the end of the calendar year in 2010. The 2004 calendar year is considered protected since the decree was issued during that year. The years 2005 through 2009 represent the five year period of non-use. The Department would not find forfeiture if use resumed before the end of calendar year 2010. An application to lease the water right to the Water Supply Bank or other action initiating a defense or protection from forfeiture would apply similarly¹.

As another example, if an extension of time to avoid forfeiture is granted for five years, the Department will presume that resumption of beneficial use or any defense or protection initiated before the end of the sixth calendar year will prevent a finding of forfeiture by the Department. Continuing with the example above, if an application for extension of time to avoid forfeiture was submitted in 2010 and the Department granted an extension for the years 2010, 2011, 2012, 2013 and 2014, then resumption or other action initiating a defense or protection from forfeiture must occur prior to the end of calendar year 2015. Note that, pursuant to Idaho Code § 42-222(4), the Department would still be required to provide notice at least 60 days prior to the end of 2014 that resumption and a report is due by December 31, 2014. However, the Department would not find forfeiture if resumption of beneficial use or

¹ Filing an application for transfer does not toll the statutory period for forfeiture of a water right due to non-use.

other action initiating a defense or protection from forfeiture occurred prior to the end of calendar year 2015.

This memo does not change Department policy on partial forfeiture. Forfeiture of a portion of a water right may occur if beneficial use is reduced for the statutory period as applied under the guidance of this memo. When discussing forfeiture issues, Department employees and water users should be mindful that any Department decision or action where forfeiture may be an issue can be contested and certain facts may lead to a different conclusion in an administrative hearing, or judicial review.



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Department of Water Resources
Eastern Region

August 8, 2014

James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Magee Family Trust

Dear Mr. Cefalo:

I recently submitted a transfer application for Magee Family Trust to move water right 34-2294. The attached document has the original signature from Fran Magee.

Please continue to process the transfer and let me know if IDWR has any questions that I can discuss regarding this transfer.

Sincerely,

Greg Sullivan, M.S., Engineer

Cc: Fran Magee
Enc: Original Signature Page

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

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Department of Water Resources
Eastern Region

APPLICATION FOR TRANSFER OF WATER RIGHT PART 1

Name of Applicant(s) Magee Family Trust Phone (208) 588-2422

Mailing address P.O. Box 55 Mackay, Idaho 83251 Email _____

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☐ No Representative

Name of Representative Greg Sullivan Brockway Engineering, PLLC Phone 208-736-8543

Mailing address 2016 North Washington St. Suite 4 Twin Falls, Idaho 83301 Email greg.sullivan@brockwayeng.com

- ☐ Send all correspondence for this application to the representative and not to the applicant.
OR
- ☒ Send original correspondence to the applicant and copies to the representative.
- ☒ The representative may submit information for the applicant but is not authorized to sign for the applicant.
OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.



Signature of Applicant or Authorized Representative

FIZAN MAGEE TRUSTEE

Print Name and Title if applicable

7-21-14

Date

Signature of Applicant or Authorized Representative

Print Name and Title if applicable

Date

A. PURPOSE OF TRANSFER

- ☒ Change point of diversion
☐ Change nature of use

☐ Add diversion point(s)
☐ Change period of use

☒ Change place of use
☐ Other _____
- Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it Part 1A.2.

Transfer 34-2294 from its existing POD and POU to a new location and existing POD owned by Magee Family Trust.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 North Skyline Drive, Suite A • Idaho Falls, ID 83402-1718

Phone: (208) 525-7161 • Fax: (208) 525-7177 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

August 11, 2014

Magee Family Trust
PO BOX 55
Mackay, ID 83251

RE: Application for Transfer

Dear Applicant:

The Department has received your application to transfer water right 34-2294. Idaho Code 42-222 defines the process by which the Department reviews transfer applications prior to approval. During the initial processing of a transfer application, the Department reviews past satellite and aerial imagery; this review always the Department to verify that the water right has been put to a beneficial use during the past five years.

While reviewing your proposed transfer, satellite and aerial imagery from 2004 to 2013 was used to try and determine the use of the water right. This aerial imagery does not indicate that the water right has been in use during this period.

Idaho Code 42-223 defines the exceptions or defenses to forfeiture. In order to continue processing your transfer application, the Department needs additional information regarding the historical use of this water right.

The application will be held by the Department until September 15, 2014 awaiting additional information on the historical use of the water right. If no information has been received by the date listed above, the transfer application will be returned as incomplete.

If you have any questions, please let me know.

Thank you,

A handwritten signature in black ink, appearing to read 'Kerrie Mathews'.

Kerrie Mathews

Cc: Greg Sullivan – Brockway Engineering



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Department of Water Resources
Eastern Region

August 4, 2014

James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Suite A
Idaho Falls, ID 83402-1718

Re: Magee Family Trust

Dear Mr. Cefalo:

Magee Family Trust has purchased water right 34-2294 from Ron Brown. Water right 34-2294 is a ground water right that can divert 0.12 cfs and can irrigated 5.8 acres. It is proposed to transfer 34-2294 to property owned by Magee Family Trust.

The beneficial use and period of use will not be changing with this transfer. The POD will change to an existing irrigation well. The ownership of 34-2294 will be change into the name of Magee Family Trust. The new POU of the 5.8 acres are identified in the attached transfer application.

No ESPA model analysis was performed because the From well and the To well are in adjacent model cells. Therefore, no model analysis is required.

Please copy our office on all correspondence regarding this transfer application.

Sincerely,

Greg Sullivan, M.S., Engineer

Cc: Fran Magee

Enc: Aerial Maps, Quitclaim Deed, Warranty Deeds, Brockway Engineering Check
12154 for \$225.00,

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