

MEMORANDUM

TO: Transfer No. 79277
FROM: Sharla Curtis
DATE: April 25, 2014
RE: Evaluation of Application

The transfer proposes to change ownership of the right involved and identify the new site for a well to be drilled to serve the lands under the right. A prior transfer, #73926, approved in April of 2008 was never accomplished. That transfer will be rescinded as part of the action taken on the new transfer application.

Deviations from Transfer Policy Standards

This application is for a change in point of diversion only and will not be advertised. Although the new well is in the same QQ as currently listed in the water right, this is not a replacement well. The old well will remain in place under a different well owner. So the net result is 2 wells but only 1 water right well (the new well).

Summary of Information Submitted

Authority to File: Ownership change documentation supplied with transfer; new owner is now authorized to file the transfer.

Water Right Validity: Right presumed to be valid because the partial decree was issued within the past five year period.

Injury to Other Water Rights: None anticipated.

Enlargement of Use: No enlargement should occur; all parameters of the right stay the same with a simple change in point of diversion.

Local Public Interest: Agriculture use is considered in the local public interest throughout Idaho.

Beneficial Use/Conservation of Water Resources:

The application proposes beneficial use consistent with conservation of water resources in Idaho.

The application is consistent with criteria of I. C. § 42-222 and should be processed.

Summary

It appears this application can be approved as reflected by the draft approval.

Condition 046 will be used since a new well is proposed.

April 14, 2014

Attn: John Westra
Idaho Department of Water Resources
2735 Airport Way
Boise ID 83705

RE: Transfer Approval 73926—Right 63-32447

Dear Mr. Westra:

Jabenosh LLC is the new owner of the VanBerkel property which includes groundwater right #63-32447. From the Department records and discussions, it was found the above described transfer was approved in April 2008 to change the point of diversion (well) to the VanBerkel property from a shared well on another non-owned parcel.

Unfortunately, the new well authorized under the transfer was never constructed by VanBerkel. However, the shared well continues to be the water source for our 2014 crop. I therefore request the Department rescind transfer #73926.

Attached is a new transfer and ownership change applications with fees for Department processing to change the point of diversion to a new well on our parcel.

WATER BEARING ZONE 250' - 400'


FOR JABENOSH, LLC

4/14/14

BERKEL 63-32447 per TRANSFER 73926

SP
2/5/2014

**DRILLING PERMIT SHOULD NOT BE ISSUED FOR THIS
IRRIGATION WELL AT THIS TIME.**

Analysis

Transfer was approved April 2008 to change POD to a proposed well. Conditioned on completion within 1 year or transfer could be rescinded. Nothing in file since then except 2009 partial decree.

Decreed 2009 so 5 year validity period after that is 2010 thru 2014, valid thru at least 2014 even without use.

Water right owner now seeks more time to complete the transfer, although no substantial cause provided in that request.

No policy memo or other written guidance in this matter except our "transfer extension form." It shows we should not approve an extension beyond 5 years from date of transfer approval, April 2013 in this case. That is probably related to the standard 5 year forfeiture period.

Options

1. Approve the request, allow 1 year to complete construction of a new well, no more time after that. The owner has not justified why we should do that in contradiction to our guidelines. Silence for almost 6 years does not show much effort by the owner.
2. Deny the request and rescind the transfer – either by owner's request or acting on our own.
 - A) Owner could file an application for permit for a new right. Unlikely to be approved since POD is in the more critical ground water concern area south of Lake Lowell that was documented by the department in 2005.
 - B) Owner could file a new transfer application for a do-over. Unless protested, this would likely be approved. The original well for this right is also in the same tract, so approving a second well for an older right does not complicate the critical concern area.

Solution

Option 2B is best. A new transfer should be filed soon to avoid potential forfeiture issues in 2015. The owner could file a new transfer, asking us to rescind Transfer 73926 at the same time. The new filing could easily be expedited.



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region • 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

February 6, 2014

Arnold J Van Berkel
C/o David Russel
935 E Spartan ST
Eagle ID 83616

337

RE: Request for an Extension of Time—Transfer 73926 #63-32477

Dear Mr. VanBerkel:

This letter is in response to your letter of January 28, 2014 requesting additional time to accomplish the above described transfer approval.

As you are aware, your transfer approval in 2008 required the change (drilling of the well) be accomplished in 1 year. Unfortunately, it is 5 + years since the approval, and our agency is unable to grant your request due to the significant number of years without due diligence.

Our Idaho Water Statutes state that nonuse of water for a period of 5 years place water rights in a position that is subject forfeiture. Water right #63-32477 was decreed during March of 2009 which starts the forfeiture period. If there has been no beneficial (irrigation) use of water under this right since March of 2009, the right may be subject to forfeiture after March 2014.

Options

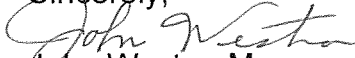
Since 2005, your property location south of Lake Lowell has been a concern regarding receding groundwater aquifer levels and lack of water sufficiency. It is very likely an application for a new appropriation of water would be protested and delayed.

A new transfer could be filed similar to the previous transfer approved in 2008. The application should be filed by March 2014 to avoid the forfeiture matter. If you desire to file a new transfer application, the following needs to be submitted to the Department:

- Fill out and submit the enclosed short form transfer application with map
- Submit \$500 filing fee with the application
- Submit a signed & dated written statement requesting the Department to rescind the approval (old) Transfer #73926 and to replace it with the new transfer application.

Should you have questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,


John Westra, Manager

Enclosure—transfer documents; Cc: M. Mortimer
Cc: M. Mortimer.

Sommer, Rachel

From: Mike Mortimer [mike@teamidaho.com]
Sent: Friday, January 31, 2014 1:35 PM
To: Sommer, Rachel
Subject: Transfer 73926
Attachments: JohnWestra Signed.pdf

John (c/o Rachel),

Find attached a signed letter from the owner of the property requesting an extension of time to divert the water associated with transfer #73926 at 9770 Farner Rd Nampa. If you have any further questions, do not hesitate to contact me. I believe, at this point, I know more about this property than the current owners. ☺

Mike Mortimer



208 391 2070 (office & fax)

208 995 3078 (cell)

mike@TeamIdaho.com