

Memo

Date: October 10, 2013

To: Water Right File 37-7767

From: Jeff Peppersack

Re: Further Development of Springs

Chuck Brockway, on behalf of Flying Heart Homeowners Association, submitted a letter to the Director inquiring about options to increase the discharge from springs that provide the source of water under their water right. Apparently spring flows have been decreasing and the HOA is unable to maintain their recreation ponds and other amenities authorized under their water right.

Brockway has proposed two options to increase spring discharge: 1) install buried perforated pipe collectors at the head of each spring, and 2) install shallow sumps at the head of each spring and pump water from the sumps. Brockway had advised his clients that the first option would be allowed under their existing rights without a transfer or other permit. The question posed in the letter is "would use of option 2 be allowed without transfer or other permit?"

Department staff met to discuss this issue. We concluded that the type of changes discussed by Brockway would constitute a change in source as the HOA would now be diverting ground water. See *Clear Springs Foods, Inc. v. Spackman* 150 Idaho 790, 804 (2010) (Spring water users "are not appropriators of ground water, which is defined as 'all water under the surface of the ground whatever may be the geological structure in which it is standing or moving,' They are appropriators of surface water flowing from springs."). Furthermore, such a change would likely constitute an improper enlargement of the water right absent the inclusion of certain limiting conditions. Such conditions, while preventing an enlargement, would negate the purpose for the work Brockway is proposing.

We acknowledged that there are water users out there that may have "developed" their springs through some level of subsurface manipulation to increase spring flows. However, the actions proposed by Brockway go beyond development of the springs and constitute a change in source seeking ground water. Since a transfer could not authorize a change in source from the existing surface water right to ground water, a new appropriation would be necessary to authorize development of ground water.¹ Alternatively, a transfer from another ground water right may provide authorization to develop the ground water source at the site.

¹ Note that our transfer processing memo provides for a change in POD from a surface water source to a location from a sump or shallow well adjacent to the surface water source if a direct and immediate hydraulic connection can be demonstrated. IDWR conditions those approvals to limit diversion to times when water is available and in priority at the original POD from the surface water source. The intent of such a change is to provide an alternate location for diversion to avoid diverting directly from the stream. The change would not be approvable if the intent was to seek water at times when the surface water was unavailable or out of priority.