

# MEMORANDUM

**Date:** March 13, 2012  
**To:** Transfer 77726  
**From:** kmathews  
**Re:** Transfer Approval

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Transfer No. 77726 for water right no. 35-8163, 35-7179, 35-2854, 35-14025 and 35-14027 proposes to combine the place of use for all referenced water rights and change the point of diversion on 35-14025 and 35-14027. All of the referenced water rights will now be diverted from two wells located at T07S R29E Sec 12 in the SENENW and NWSWNW quarters.

The application was filed by, Randy Budge, an attorney representing Gehring farms. Several issues were identified with the application, including 28.7 acres where forfeiture was a concern. During the transfer review I noticed that 17.8 acres located in T07S R29E Sec 7 of the NWNW quarter and 8.8 acres in T07S R29E Sec 7 of the NENW quarter that did not appear to be irrigated. The water right covering these acres is 35-8163. In addition, 2.1 acres located in T07S R29E Sec 12 of the NWNE quarter also did not appear to be irrigated. The water rights covering these acres are 35-8163, 35-7179 & 35-2854. Aerial and landsat images indicated that these acres have not been irrigated for more than five years.

The application, a list of the identified issues, and a refund were sent to the attorney in September of 2011. On January 25, 2012 an email was received from Jared Gehring, with a CC to Randy Budge (attorney for Gehring Farms), stating the following "The water right owners are in agreement with IDWR regarding the acres mentioned as not being irrigated for a period of 5 or more years. I understand the forfeiture issue now, thank you for the clarification. With that in mind, the water right owners would like to keep as much cfs and volume as possible regarding this application".

On January 27, 2012 an amended application was received from the applicant. During the second review POD discharge data was collected from the WMIS database in an attempt to consolidate the diversion rate onto the available acreage. It was found that the applicant has not been withdrawing the allowed discharge rate of 10.20 cfs. Consolidation was not an option for this transfer. During this review process it was decided to forfeit 2.1 acres from water rights 35-7179 & 35-2854 in a proportionate amount, 35-8163 was not included due to the negligible overlap proportionate amounts. Water right 35-8163 forfeited 26.6 acres as no other water right place of use was overlapping the acres in question.

## Authority to file:

The water rights are currently in the name of Gehring Farms, Ferd Gehring & Son Inc., and the place of use is within Gehring Farms property boundaries. The application was signed by Gary Gehring who is the President for Gehring Farms and an authorized signatory.

## Validity of the Water Right:

Water rights 35-14027 and 35-14025 were decreed in January of 2002 and appear to have been fully used since that time. Forfeiture is not an issue. Water rights 35-7179 and 35-2854 were also decreed in January 2002. The water rights will be reduced as described above due to more than five years of non-use.

## **M E M O R A N D U M**

A partial decree was issued in the SRBA for water right 35-8163 on January 31, 2002. The SRBA claim was based on an existing permit. The partial decree included a condition stating that the decree was subject to revision based on the departments permit review for licensing. The department issued a water right license on March 6, 2002. The 2002 license supercedes the decree and replaces the decree. This transfer was based on the water right license.

**Injury to Other Water Rights:**

No injury to other water rights was identified. An ESPA analysis was not conducted as part of this transfer due to the fact that the movement of the Points of Diversion occurred within adjacent model cells.

**Enlargement of Use:**

No issues identified.

**Local Public Interest:**

No issues identified.

**Beneficial Use / Conservation of Water Resources:**

No issues identified.

Review of the application finds there is not clear inconsistency with criteria set forth in Section 42-222 Idaho Code preventing processing of this transfer application.