



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

July 18, 2011

Travis Thompson
PO Box 485
Twin Falls, ID 83303-0485

Dear Mr. Thompson:

Please find enclosed two water right transfer applications, in the name of Six S Ranch LLC, that were recently filed by Sharon Strickland with our office. The first application seeks to modify a portion of groundwater right 45-13507 to apparently cover a pond and an area of irrigation that are not currently covered by existing water rights. The second application seeks to modify several Marsh Creek and groundwater rights by creating a permissible place of use. A preliminary review of the applications indicates that they are incomplete and there are several discrepancies that prevent processing of the applications.

The first application does not include a change in nature of use analysis detailing the conversion from irrigation use to pond use(s). Details regarding the size of the pond, number of acres converted to pond use(s), etc. needs to be part of this analysis.

Part 1 of the application should reflect how the portion of the right(s) involved with the transfer should appear after the proposed transfer. Review of this section of the first application does not indicate any reference to any water use(s) or amount(s) associated with a pond. In addition, the proposed points of diversion listed on this section of the application consist of a new well located near the proposed place of use ("Don's Place"), and one of the original wells described on right 45-13507 located about 2.4 miles to the northwest. The new well listed on the application does not include a full legal description (government lot or quarter-quarter description). The application should completely describe only the points of diversion that are part of the system that conveys the portion of the right(s) involved with the transfer.

The first application does not include a "Part 2A" section (description of right as recorded) for right 45-13507. However, there are three separate "Part 2B" sections (description of the portion of the right being changed as it appears **before** the requested changes). One of these "Part 2B" sections does include some uses and amounts that could be associated with a pond. I assume this was some sort of an attempt to describe the portion of the right after the proposed change(s), which should be on "Part 1" of the application. However, I am confused with regards to the amounts listed on this particular page. It appears that the application is proposing to modify a 13.3 acre portion of right 45-13507. However, even this is not entirely clear since section 5d of "Part 1" of the application appears to describe a total of 12.43 acres being dried up. Right 45-13507 currently allows for the diversion of 3.47 cfs for the irrigation of 463 acres. Proportionately 13.3 acres would provide a 0.10 cfs portion of right 45-13507 [(13.3

acres ÷ 463 acres) x 3.47 cfs], but the application appears to list 0.27 cfs as the amount of water being transferred. IDWR will allow a disproportionate split of water rights in the transfer process provided transferred or remaining irrigation portions do not exceed 0.02 cfs per acre. However, the 0.19 cfs listed on this particular page would exceed 0.02 cfs per acre assuming the 8.5 acres listed on "Part 1" of the application is correct. In addition, I am not sure what the 59 ac-ft listed on this particular page of the application (or on "Part 1" of the application) is based on. Preparing the change in nature of use analysis detailing the conversion from irrigation use to pond use(s) may be of assistance in determining what amounts should be listed on the application.

IDWR considers the checklist on the first page of the application (Minimum Requirements Checklist) as part of the transfer application. Examination of this page indicates several items were not checked on the checklist.

Examination of the second transfer revealed that a "Part 2B" section (description of the portion of the right being changed as it appears **before** the requested changes) was not included for right 45-13507. This should reflect the remainder of right 45-13507 after subtracting the portion of the right that is involved in the first transfer.

The total amount of water, 112.57 cfs, listed on the second transfer appears to be incorrect. Prior to either transfer, the twelve Marsh Creek rights are limited to 88.64 cfs, and the five groundwater rights are limited to a combined total of 21.79 cfs, for a total amount of 110.43 cfs. In addition, this total will be smaller than even this 110.43 cfs on the second transfer due to some portion of right 45-13507 being associated with the first transfer.

The second transfer application is not clear regarding what is being proposed with the points of diversion for the water rights involved with the transfer. As currently proposed, it appears that after the requested transfer, there will only be two points of diversion on Marsh Creek, and one single groundwater diversion (consisting of a new well) for all of the rights associated with the transfer. In addition, the legal description for the new well does not match the well location shown on the map that accompanied the application. During preliminary discussions regarding this transfer, modifying and clarifying several existing points of diversion was discussed, but it appears that there was no effort to address those items. Some sort of attachment clarifying the points of diversion for each right after the proposed transfer would be helpful.

The second transfer proposes a 2,369.4 acre permissible place of use. All of the rights involved with the transfer currently allow for the irrigation of a total of 2,127.0 acres. After subtracting acres for the first transfer, this total will be reduced to a smaller number of allowable acres. For transfer applications that propose a permissible place of use that is larger than the allowable total acres, IDWR requires that an additional map be included with the application that shows the exact location of the allowable total acres within the proposed permissible place of use boundary. In addition, upon approval of such transfers, a condition requiring that a new map of

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the allowable total acres be submitted whenever the place of use changes within the permissible place of use boundary is implemented as part of the transfer approval.

Both transfer applications include proposed places of use, or portions of places of use, that are not currently covered by existing water rights. For transfer applications that change the place of use of a water right, the applicant must show that they own the proposed place of use. There was no evidence supporting the applicant's ownership of the new lands that are included in the proposed places of use. If the applicant does not own the new lands that are included in the proposed place of use, they must provide ownership documentation indicating who owns the new land, and some sort of documentation clarifying who will own the water rights on these new lands after the proposed transfer.

Both transfer applications do not include the original signature page, but copies of faxed documents. If an application for permit or transfer is faxed to the Department, and the application is otherwise complete and fees have been paid, then the Department will consider the application to be filed as of the date of the fax, provided the original document is submitted in a timely manner. For those applications, the Department will follow up to seek the original documents to complete the submittal. If the originals are not submitted, the Department will ask, in writing, for the original documents (pursuant to 42-204, additional information requirements for permits) and provide 30 days for submittal. If the original signed documents are not submitted, the Department may void or reject the faxed application as appropriate.

As indicated previously the applications that were filed are being returned so that the various items that need to be addressed can be addressed. If corrected applications addressing the items mentioned in this letter are not resubmitted within 30 days, then IDWR will initiate a refund of the already submitted filing fees (\$2,970.00 per IDWR receipts # S032007 and S)32008) and any future resubmitted applications will be considered newly filed applications and subject to the new transfer filing fee schedule.

If you have any questions, or if I can be of any further assistance, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Skinner", with a stylized flourish at the end.

Corey Skinner, PE
Water Resource Engineer

Enclosures