



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 1341 Fillmore Street, Suite 200 • Twin Falls, Idaho 83301-3380

Phone: (208) 736-3033 • Fax: (208) 736-3037 • Web Site: www.idwr.idaho.gov

January 28, 2010

C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

Zach Latham
2016 North Washington St., Suite 4
Twin Falls, ID 83301

Dear Mr. Latham:

A review of application for transfer #76280, recently filed with the Idaho Department of Water Resources (IDWR) on January 12, 2010 by Brockway Engineering on behalf of Cottonwood Creek Home Owners Association (HOA), revealed some deficiencies that need to be addressed before the application can be processed. Upon receiving the application, IDWR receipted the filing fee and assigned the application a transfer number. The application proposes changing the place of use by creating a 107.4-acre permissible place of use for rights 37-577CG and 37-657E. Processing of the application was not started due to the insufficiency of evidence allowing the applicant authority to file and make the proposed modifications to water rights 37-577CG & 37-657E. As a result, we are returning the transfer application. If the application is not resubmitted within 30 days of the date of this letter with the required information, the application filing fee (\$290.00 paid via checks #9116 & #9126 in the name of Brockway Engineering, PLLC per IDWR receipt S031234) will be refunded.

For applications that propose changing the place of use of a water right, the applicant not only needs to show that they own the right involved with the transfer &/or the land to which it is appurtenant, but they must also show that they own the land where they are proposing to move the water right to. If the land is owned by a party other than the applicant, then the applicant must have some sort of documentation from the current owner of the land allowing the applicant to move the water right(s) to their land. In addition, documentation must be included that addresses the ownership of the right(s) on the land. The documentation must clearly address the issue of whether the applicant will retain ownership of the right(s) on someone else's land, or whether the land owner will own the right(s) once the transfer is approved. There is no documentation included with the application showing ownership of the proposed permissible place of use. Examination of Blaine County tax lot data available to the Department appears to indicate that the proposed 109.7-acre permissible place of use may not actually be owned by Cottonwood Creek HOA. According to the Department's data, Anson Beard, Leslie Benz Revocable Trust, and John Whittier all own parcels within the proposed PPU. Likewise, it is unclear if Cottonwood Creek Investments withheld portions of the water rights currently appurtenant to ground that has since been sold. Although a *Water Right and Grant Deed and*

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Assignment (Instrument #571670, Hailey, Blaine, Idaho) was provided, it is dated October 5, 2008. The Blaine County tax lot data available the Department was last updated 3/12/2008, indicating the ground had been sold prior this agreement. In any case, unless otherwise indicated in deeds or a separate agreement, the water rights are appurtenant to the land and its current owners. The Department did not receive such an agreement with the application, so it is unclear what interest the HOA has in these rights.

In summary, without the following required information clarifying the water right ownership, processing cannot continue with application #76280:

1. A copy of existing deeds or agreement withholding the water rights from the current land owner OR a document (such as a quitclaim deed), conveying the current land owners' interest in water rights 37-577CG & 37-657E to the HOA.
2. A copy of an agreement allowing the HOA to have the ability to own a water right on the current land owner's property.

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 dark ink, appearing to read 'J. Cooper', with a long horizontal flourish extending to the right.

Jeffrey S. Cooper
Sr. Water Resource Agent, IDWR

Enclosure

cc: Cottonwood Creek HOA c/o: Robin Taylor, sec (w/o Enclosure)