



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

February 18, 2010

STERLING LANDSCAPE CO
C/O JOHN H STERLING
4663 W USTICK RD
NAMPA ID 83687

RE: Transfer Application 73890 acting on Water Right No. 63-10029

Dear Mr. Sterling:

Your transfer application is a year older and it has cycled back to the top of the processes that have been assigned to me. Before I continue, let me apologize for my part in the processing delay of this application. I did receive your letter dated March 5, 2009. Thank you for your timely response. In that letter you supplied some of the information essential for processing this transfer. Unfortunately, I still do not have all the information I need.

Shortly after I reopened this application file last week, I received a phone call from Mr. Vic Conrad. He expressed his willingness to share his personal knowledge of the historical commercial use of the water right associated with your transfer application. His offer may have been a simple coincidence, but the lack of historical consumptive use has put a stop to any continued processing of this application.

I have written this letter to summarize the areas where the Department needs additional information and to provide a possible approach for getting this transfer back on track.

Although your transfer application does not propose a change in the nature-of-use, I believe that the size of the pond in question suggests that change. From a review of 2004-2009 aerial photography, I am able to locate an existing pond covering ~ 0.75-1.25 acres in the NWSW of sec 32 in Twp 4 North, Rge 1 West. At the rate you have requested in your transfer application, (0.45 cfs), a pond averaging as little as one foot in depth would take more than one day to fill. This pond is not just a short-term, wet corner in one of your fields, but an area for water storage. Water storage is a change to the nature-of-use for a water right that did not have a storage component. I believe that your proposed commercial wildlife habitat and aesthetic use is a storage use. If I have understood the intent of your transfer application correctly and there is a need to describe storage as a part of the right now, it may be to your advantage to amend your application before we proceed.

Idaho Code § 42-222 instructs IDWR to prevent enlargement of a water right through a transfer. Therefore, IDWR requires transfer applicants to provide an accounting of the extent of historical beneficial use, including annual consumption, when proposing a change in nature-of-use. I believe transfer application 73890, acting on Right 63-10029, involves a change in the nature-of-use.

Decreed Water Right 63-10029 authorizes a commercial use of water which was developed to process mint. In order to make progress with this transfer application you are required to provide the IDWR with historical information documenting water use in the operation of the mint still. Please provide information which supports the extent of commercial use occurring in the time prior to your transfer application. The highest-year historic consumptive use will be the basis for the annual volume of consumptive use available for transfer.

You may discover that the actual commercial water use was different than what has been decreed for this right. The field examiner for your license found a likely annual use of 34.6 AF. The license was issued for 177.4 AF, perhaps due to a misconception about the length of the mint distillation season. The IDWR cannot assume that 177.4 AF was consumed annually when evaluating this proposed change in nature of use and without the required support documentation, the IDWR cannot process this transfer application.

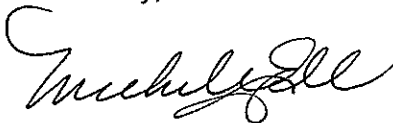
In addition to Mr. Conrad, some possible sources for historic data are: the Idaho Mint Commission at this web address <http://www.idahomint.org>, or the Idaho Mint Growers Association, whose current executive director has an office in Meridian, Idaho. Any supporting information you provide must be directly related to the actual historic commercial use of water at your facility.

Please submit the requested information for application processing to continue. You may seek additional time to provide the information by making a written request to delay processing. Your written response including the requested information, or a request for more time to seek the information, must be received with thirty (30) days of the date of this letter.

If you no longer wish to proceed with the transfer, you may withdraw your application and because it is still in the initial review phase, you will be eligible for a refund of your transfer application fees. The application fees will not be refunded for a rejected application. However, a rejected application may be re-filed when adequate information can be provided.

I would welcome the opportunity to meet with you to discuss this application. My office is in the Water Center at the intersection of Front Street and Broadway but feel free to contact me by phone or email.

Sincerely,



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