



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C.L. "BUTCH" OTTER

Governor

GARY SPACKMAN

Interim Director

June 3, 2010

V&L Dairy
c/o Frank Veenstra
2729A South 1600 East
Wendell, ID 83355

Gentlemen:

In November of 2009, our office received an amended transfer application # 73740 in the name of V & L Dairy. The application was submitted by Brockway Engineering and proposes changing irrigation water right 36-16752 to stockwater and commercial use associated with an existing dairy operation located within the SESE of Section 32, Township 07 South, Range 14 East. The amended transfer application replaces transfer application # 73740 originally filed in April of 2002. A review of the application file indicates that there are several items that prevent the processing of the application...

The listed applicant on the application is V & L Dairy, but the recorded current owner of the right (36-16752) involved with the transfer is Frank W. Veenstra. A warranty deed included with the amended application indicates that the proposed place of use (dairy site) is owned by Frank W and Mary Jane Veenstra. There is no information in the file indicating that V & L Dairy actually has any authority to file the application (owns the right &/or the land involved with the transfer). 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.

Examination of various documents in the application file also indicates that there may be issues with the applicant's address (2729A South 1600 East Wendell, ID 83355) that is listed on the application.

The amended application has not actually been signed. A signed power of attorney form is included with the application that appears to grant Greg Sullivan of Brockway Engineering signature authority for transfer applications involving right 36-16752 on behalf of V & L Dairy or Frank Veenstra, but the application was never actually signed by Mr. Sullivan or any other representative of V & L Dairy.

The amended application describes one proposed point of diversion at the dairy site, but the map included with the application appears to indicate two proposed points of diversion. The exact number of proposed diversion points needs to be clarified. Various documents in the application file also allude to the possibility of existing decrees being utilized to provide water for the dairy site. Examination of Department records indicates that decreed water rights 36-15206 (stockwater) and 36-15207 (domestic) both in the name of Frank Veenstra appear to be appurtenant to the dairy site. These records appear to describe two separate wells as points of diversion. If both of these wells are to serve as the points of diversion for the transfer, then rights 36-15206 and 36-15207 need to be included as part of the transfer application to reflect the addition of authorized points of diversion via the apparent interconnected system.

The amended application proposes moving a point of diversion of a groundwater right within the Eastern Snake Plain Aquifer. A ground water model analysis of the proposed change indicates that depletions greater than 10% occur to the Thousand Springs reach, which is presumed to cause injury and must be fully mitigated so that there are no increases in depletion to that reach. Examination of the amended application and various documents in the application file indicate that no mitigation plan was included with the amended application. On February 11, 2010, a letter (copy enclosed) was sent to Frank Veenstra and copied to Brockway Engineering outlining the need for the submittal of a mitigation plan. As of this date, the Department has not received a mitigation plan.

The Department will hold further processing of your application for 30 days to allow submittal of the required information to address the items outlined in this letter. After that time, if adequate information is not received, the Department will issue a preliminary order to reject the application.

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

Sincerely,



Corey Skinner, PE
Water Resource Engineer

Enclosure

cc: Greg Sullivan – Brockway Engineering
Frank W Veenstra