



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way, Boise, Idaho 83705-5082

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C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

November 5, 2008

NORM SEMANKO
6223 N DISCOVERY WY STE 200
BOISE ID 83713

Re: Orchard Ranch LLC Applications 63-32703 and 73834

Dear Norm:

This letter seeks information for the applications for permit and transfer for the Orchard Ranch project we discussed the other day at the Idaho Department of Water Resources (IDWR) State Office. The request is in three parts – overview, permit application, and transfer application.

Overview

What is the total water demand for the project in terms of maximum rate of flow and estimated maximum annual diversion volume, assuming a best-case scenario in which everything is fully developed? If approved, will the full amounts of water applied for in both applications be additive (20.96 cfs) or not?

How will the development be completed within typical time frames associated with IDWR approvals?

Application for Permit 63-32703

The application exceeds 5.0 cfs and therefore requires information noted in Water Appropriation Rules 40.05c through 40.05g (copy enclosed). Please address the following items while responding to Rule 40.

- 1) Document the likelihood of injury to existing wells within a one-mile radius – instead of ½ mile radius - of the proposed points of diversion. Discuss strategies to prevent injury and/or possible mitigation for injury that might occur to wells in the general location.
- 2) Discuss plans to monitor and report data about ground water supply and ground water levels in and around the project area.
- 3) Document long-term sustainability for ground water supplies require by a planned community of this size.
- 4) Discuss possible impacts of pumping significant amounts of ground water from proposed wells within about ¼ mile from the Mtn. Home Ground Water Management Area (GWMA). Will such pumping cause the GWMA boundary to shift over time?

November 5, 2008

Page 2

5) Will pumping from the proposed site cause additional ground water level declines in and/or near the GWMA and the Cinder Cone Butte Critical Ground Water Area (CGWA)?

6) For Rule 40.05g regarding local public interest, describe how the applicant intends to become a municipal provider under I. C. § 42-202B. Also, describe the applicant's progress with required local government approvals. Please do not send comment letters to entities listed in 40.05g – an outdated method.

7) Other miscellaneous information:

- Please confirm the application map is incorrect in showing 2 wells in Section 19 – those appear to be the wells proposed in the transfer application.
- Please review the items in the enclosed marked-up copy of the application – several things need to be corrected on the application. An application can be amended on the original by someone with authority to sign for the applicant, or an amended application can be completed and submitted to make corrections.

Application for Transfer 73834

The transfer proposes to retire irrigation rights in the CGWA and move the rights to proposed wells in the eastern portion of the planned community. The proposed wells will be within Basin 61 and the GWMA. The application also describes an indeterminate rate of flow and volume not to exceed 11.36 cfs and 2975 af. Total extent of municipal use under the transfer will apparently depend on the extent of approval under companion Application 63-32703.

The application further notes some residual irrigation will remain for the current irrigation place of use if that water is not needed for municipal use in the planned community. Several significant types of information are needed to support the transfer application.

1) Validity of the three rights proposed for transfer must be determined. Those rights were affected by approved Transfer 5784 (renumbered to 68468) issued in March 2001. IDWR approved additional time to complete development described by that transfer – retired irrigation should have been replaced by a dairy by March 2003. That extension expressly did not stay forfeiture for the rights. Subsequent to the approval of the extension, right 61-7264B was decreed in August 2002. Transfer 5784/68468 defined 631 acres of irrigation plus water for a dairy.

Transfer Application 73834 was filed in June 2007. Validity of the rights must be determined between 2001-2002 and the next five years – through about the end of the 2006 irrigation season. IDWR aerial photos for 2004 and 2006 confirm irrigation of 539 acres in the permissible place of use under Transfer 5784/68468 instead of 631 acres authorized by that transfer.

The prior transfer redefined those three rights. Failure to develop a dairy does not include credit for land irrigated that should have been retired for the dairy (91 acres at 1.27 cfs and 218 af). Absent additional verification of authorized beneficial use during the specified period, IDWR will recognize 539 acres of valid irrigation under the three rights.

2) Changing the nature of use from irrigation to municipal requires documentation of the historic consumptive use. Typically this is done by crop records using current data on the "Allen-Brockway" website. The rights already define irrigation rates of flow and diversion volumes. Consumptive use data can identify the consumptive use available for transfer. Please provide that information for 2002-2006 for the maximum number of irrigated acres IDWR can recognize – 539 or more if justified.

- 3) Please provide information to show that a sustainable ground water supply is available for the proposed well sites. Also, identify any wells within a one-mile radius of that site. Describe possible injury to surrounding wells and plans, if any, to mitigate possible injury as you described for Application 63-32703.
- 4) Discuss plans to monitor and report data about ground water in and around the project area.
- 5) Will pumping from the proposed site cause additional ground water level declines in and/or near this portion of the Mtn. Home GWMA?
- 6) Local public interest information similar to that in Application 63-32703 should be supplied.
- 7) What affect will the proposed transfer have on the local agricultural economy?
- 8) Transfer approvals include a limited period to complete the proposed development. While brief additional time can sometimes be approved, that is not a wide open period to complete projects. Application 73834 also describes a possible but unspecified amount of residual irrigation at the current place of use in the rights. A transfer approval cannot accommodate both unless you prepare a transfer application with more specific Part 1 application information and also provide information detailing how this will work within a reasonable time frame (typically one or two years). Recall the dairy approval in the previous transfer – new uses not developed in an approved transfer are subject to forfeiture, not to automatic reversion to the use prior to transfer approval.
- 9) The transfer application should be amended to at least reflect the maximum amount of authorized irrigation that can be verified during the time period previously described.

As you can see, substantial information is needed to evaluate both applications to determine if they are approvable. IDWR is working on a hydrogeology review of the general area in question at this time. Your additional information will be included with any information developed by IDWR to help with this evaluation.

In conclusion, please submit the requested information for processing of Applications 63-32703 and 73834 to continue. You may seek additional time to provide the information by making a written request to delay processing for up to six months. Your written response including the requested information, or a request for more time to seek the information, must be received by **February 1, 2009**. Without a timely reply, IDWR will issue a preliminary order to void, reject or deny the applications. Thank you for your attention to these matters. Please let me know if you have any questions.

Sincerely,



John Westra
Western Regional Manager

Enclosure

Water Appropriation Rules 40.05.c through 40.05.g

c. The following information shall be submitted for applications to appropriate unappropriated water. . . .

Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:

- i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted.
- ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.
- iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:

- i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.
- ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source.

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:

- i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.
- ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:

- i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed.
- ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows:

The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the director.

→ Note c not send letters to entities - see Alternative in dept letter