

Skaggs, Pam

From: Baxter, Garrick
Sent: Tuesday, August 26, 2008 1:25 PM
To: Skaggs, Pam
Cc: Carlsen, Ernie; Carlson, Dave
Subject: RE: Effect on supplemental ground water license when decreed surface water right is abandoned

Kent Foster has now retired and Rob Harris has taken over this case. We had a hearing on this water right last week. I reiterated again to Rob the same position we took with Kent: that they can try to claim that the primary water right has been forfeited, but that it would then be the Department's position that the supplemental license goes away. Rob was not aware of our previous conversations about having the water user petition to correct the license. Yesterday, I forwarded Rob my original email to Kent Foster suggesting that he have Roger Werner contact IDWR and try to correct the license if they believe the supplemental condition was in error. I would expect that Roger will be contacting IDWR soon to see able addressing the license. Or you guys could contact Roger and get the ball rolling.

From: Skaggs, Pam
Sent: Tuesday, August 26, 2008 12:45 PM
To: Baxter, Garrick
Cc: Carlsen, Ernie; Carlson, Dave
Subject: RE: Effect on supplemental ground water license when decreed surface water right is abandoned

Garrick,

We are revisiting this question because of pending transfer applications. We don't currently have anything here in the State Office (or Eastern as far as I know) from Kent Foster, Rocky Mtn Environmental (Roger Warner) or BC Properties, requesting a correction to the License. Did you have any further contact or discussion on this matter with Kent?

We now have 7 different owners & 12 splits of the original license. We would still like to address the issue once for all. I am just checking for any additional information, comment or correspondence you might have on the subject.

Thanks for you help.

Pam

From: Baxter, Garrick
Sent: Tuesday, December 11, 2007 11:46 AM
To: Peppersack, Jeff; Carlsen, Ernie; Carlson, Dave; Keen, Shelley; Skaggs, Pam
Subject: RE: Effect on supplemental ground water license when decreed surface water right is abandoned

I've been able to catch up with Kent Foster. I explained the Department's concern with Roger Werner's suggested approach in his letter dated October 12, 2007 to Ernie. I explained that the Department is willing to agree that 22-13434 is forfeited but that it would be the Department's position that ground water right 22-13582 could not then be used. Kent explained to me that it is his understanding that 22-13434 has not been used since even before the licensing of 22-13582. I suggested that the best approach would be for IDWR and BC Properties to work together to revisit the license. I explained that BC can petition to correct the license if they believe the condition was an error during licensing. He said that they would do whatever is necessary to make this right.

I'll send out an email shortly to Kent, cc to all of you, suggesting that Roger Werner and IDWR get together to discuss what the process should be moving forward.

Garrick L. Baxter
Deputy Attorney General
Idaho Department of Water Resources

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

-----Original Message-----

From: Peppersack, Jeff
Sent: Thursday, November 15, 2007 5:02 PM
To: Baxter, Garrick; Carlsen, Ernie; Carlson, Dave; Keen, Shelley; Skaggs, Pam
Subject: Effect on supplemental ground water license when decreed surface water right is abandoned

Folks,

Our meeting yesterday raised the issue of a surface water right abandonment and its affect on a supplemental ground water right. We have some documentation of the history of sw and gw use on the property covered by the gw license, but the documentation was submitted in relation to a transfer on a different portion of the ground water license. We were able to proceed with that transfer on the basis that the portion being transferred was above the canal and likely was not irrigated with sw - so the gw right was primary for that portion.

The subject of our meeting was a different QQ covered by the same gw license with different owners. Their objection to the sw recommendation indicates that the right was abandoned. I think they should be informed that our records indicate the gw right is a supplemental right and non-use of the sw right jeopardizes the validity of the gw use. They can petition to correct the license if they believe the supplemental condition was an error during licensing. They should be able to utilize some of the documentation already provided by Rocky Mountain Environmental and Skip Jones in relation to the transfer that was previously filed, but they should address the development of the gw use in relation to sw use for the subject property (or perhaps the entire place of use for the original license so we can deal with it all at once).

Garrick, you indicated that you would call Kent Foster to follow up - that's probably the next step.

Thanks,
Jeff

Transfer No. 73714

Name of Applicant Glenn P. and/or Merri Moradian Phone 208-552-2018
Post Office address 5080 Long Cove Drive, Idaho Falls, ID 83404

1. ☐ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use

☒ Change nature of use ☒ Change period of use ☐ Other

2. Describe the reason for the proposed changes We are developing a subdivision on our property and need to provide a fire protection pond.

1. <u>Right Number</u>	<u>Priority</u>	<u>Amount (cfs/ac-ft)</u>	<u>Nature of Use</u>	<u>Period of Use</u>
<u>22-13580</u>	<u>1/08/1991</u>	<u>0.02 cfs</u>	<u>Diversion to</u>	<u>4/15</u> to <u>10/15</u>
<u> </u>	<u> </u>	<u> </u>	<u>Storage</u>	<u> </u> to <u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u> to <u> </u>
<u> </u>	<u> </u>	<u>1.32 af</u>	<u>Storage for</u>	<u>1/1</u> to <u>12/31</u>
<u> </u>	<u> </u>	<u> </u>	<u>Fire Protection</u>	<u> </u>

2. Total amount of water being transferred 0.02 cubic feet per second and/or _____ acre-feet per annum.

3. Source of water Groundwater tributary to _____

4. Point(s) of Diversion:

Lot	¼	¼	¼	Sec	Twp	Rge	County	Local name for diversion
		SW	NE	5	5N	4SE	Teton	

5. Lands irrigated or place of use:

5. Lands irrigated or place of use:

[illegible]

Total Acres

of _____

PART 2

Transfer No. _____

To your knowledge, has any portion of this water right undergone a period of five or more consecutive years of non-use?

NO

If yes, describe _____

B. DESCRIPTION OF PORTION OF RIGHT BEING TRANSFERRED

(If the entire right is to be changed by the applicant, omit part B and C.)

- amount 0.02 cfs for Irrigation purposes from 4/15 to 10/15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		SW	NE	5	5N	4SE	Teton	

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	4SE	5		1															1
				L-2															

C. DESCRIPTION OF UNCHANGED PORTION OF RIGHT (omit if there is no change)

Total Acres 1

- amount 0.46 cfs for Irrigation purposes from 4/15 to 10/15
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)
amount _____ for _____ purposes from _____ to _____
(cfs/ac-ft)

2. Point(s) of Diversion:

Lot	1/4	1/4	1/4	Sec	Twp	Rge	County	Local name for diversion
		SW	NE	5	5N	4SE	Teton	

3. Lands irrigated or place of use:

Twp	Rge	Sec	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
5N	4SE	5		10															24
				L-2					L-3										

Total Acres 24

of _____

Transfer No. _____

PART 1

General Information:

Description of diversion system Well, pump and mainline to lined fire pond.

b. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?
X Yes _____ No. If yes, provide a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes.

c. Describe the affect on the land now irrigated if the place of use is changed pursuant to this transfer:

We are just putting a fire pond on an area previously irrigated.

d. Remarks:

The remaining water right may be sold to specific lot holders in the subdivision or sold outright. Lot owners will drill their own wells for domestic use.

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER RESOURCES

This is to certify that I have examined Application for Transfer of Water Rights No. _____

and the said application is hereby _____, subject to the following conditions:

Witness my hand this _____ day of _____, 20 _____.

For the Director _____

Not Applicable to
NONE Sec 5, TSN
R45E

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

10/02/2007

WATER RIGHT NO. 22-403

Owner Type Name and Address
Current Owner PETER MICKELSON

Priority Date: 06/01/1901

Basis: Decreed

Status: Active

Source Tributary
SOUTH LEIGH CREEK TETON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	/	/	2.8 CFS	
Total Diversion			2.8 CFS	

Location of Point(s) of Diversion:

SOUTH LEIGH CREEK || Sec. Township | Range | County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05N	45E	5	3	NENW		4	NWNW							
		6	1	NENE		2	NWNE							

Conditions of Approval:

1. P/U AC. IRR. = 160.

Dates:**Licensed Date:****Decreed Date:** 12/16/1910**Enlargement Use Priority Date:****Enlargement Statute Priority Date:****Water Supply Bank Enrollment Date Accepted:****Water Supply Bank Enrollment Date Removed:****Application Received Date:****Protest Deadline Date:****Number of Protests:** 0**Other Information:****State or Federal:****Owner Name Connector:****Water District Number:** 01**Generic Max Rate per Acre:****Generic Max Volume per Acre:****Civil Case Number:****Old Case Number:****Decree Plaintiff:****Decree Defendant:****Swan Falls Trust or Nontrust:****Swan Falls Dismissed:****DLE Act Number:****Cary Act Number:****Mitigation Plan:** FalseClose

Not Applicable to NWNE
Sec. 5 T5N R4SE

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

10/02/2007

WATER RIGHT NO. 22-404

Owner Type Name and Address
Current Owner PETER MICKELSON

Priority Date: 06/01/1903
Basis: Decreed
Status: Active

Source Tributary
SWAMP SOUTH LEIGH CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	/	/	0.4 CFS	
Total Diversion			0.4 CFS	

Location of Point(s) of Diversion:

SWAMP | Sec. | Township Range | County

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
05N	45E	5	3	NENW		4	NWNW							
		6	1	NENE		2	NWNE							

Conditions of Approval:

1. |P/U AC. IRR. = 160.

Dates:

Licensed Date:

Decreed Date: 12/16/1910

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal:

Owner Name Connector:

Water District Number: 01

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

NW NE Sec 5 TSN R4SE
Not on P.O.U. List

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommended Right Report

10/02/2007

WATER RIGHT NO. 22-608

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	LEIGH CREEK CANAL CO C/O VERLE JARDINE 446 N HWY 33 TETONIA, ID 83452 (208) 456-2845

Priority Date: 01/22/1916
Basis: Decreed
Status: Active

<u>Source</u>	<u>Tributary</u>
SOUTH LEIGH CREEK	TETON RIVER

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
IRRIGATION	04/15	10/31	54.4 CFS	
Total Diversion			54.4 CFS	

Location of Point(s) of Diversion:

SOUTH LEIGH CREEK | NENWSE Lt 3 | Sec. 32 Township 06N | Range 46E TETON County

IRRIGATION Use:
Acre Limit: 3173.84

Place(s) of use: Large POU Info

Conditions of Approval:

1. C18 | This partial decree is subject to such general provisions necessary for the definition of the rights
or for the efficient administration of the water rights as may be ultimately determined by the
Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6),

- Idaho Code.
2. 135 The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
3. 129 Place of use is within the area served by Leigh Creek Canal Company.
4. 160 This water right is subject to the delivery provisions contained in Roxana Canal Co. v. Daniels, Equity No. 2447 (D. Wy. Feb. 4, 1941) ("Roxana decree"). Nothing in this Partial Decree is intended to relieve or alter the state of Idaho nor the state of Wyoming from their obligations contained in the Roxana decree.
5. F15 The point of diversion for this water right is in Wyoming, T44N, R118W, Sec. 5 SENWNW LT 4, 6PM for the Hog Canal. The point of diversion shown above is where the conveyance system enters Idaho.
6. F01 Water is delivered through the Hog Canal, also known as Leigh Creek Canal. Ditches with headings off the Hog Canal located in Wyoming provide irrigation water for portions of the place of use.
7. F06 The following rights are all diverted through point of diversion described above: 22-378, 22-379 and 22-608.

Dates:

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Swan Falls Trust or Nontrust:

Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

Close

RightID584657

Place(s) of use:

Place of Use Legal Description: IRRIGATION TETON County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
05N	45E	2	3	NENW		4	NWNW			SWNW			SENW	
				NESW			NWSW			SWSW			SESW	
		3		SWSW			SESW							
				SWSE			SESE							
		4	1	NENE	2	NWNE			SWNE			SENE		
				3		NENW			4			NWNW		SWNW
				NESW			NWSW			SWSW			SESW	
				NESE			NWSE			SWSE			SESE	
		5		NWSW			SWSW							
				8			NENE							
				NENW			NWNW			SWNW			SENW	
				NESW			SESW							
				NESE			NWSE			SWSE			SESE	
				9			NENE			NWNE			SWNE	
				NENW			NWNW			SWNW			SENW	
				NESW			NWSW			SWSW			SESW	
				NESE			NWSE			SWSE			SESE	
				10			NENW			NWNW			SWNW	
				NESW			NWSW			SWSW			SESW	
				46E			7			NWNE				
				NENW			SENW							
				NESE			NWSE							
06N	45E	33		SENW										
				NESW										NWSW
	46E	32		NWSE			SWSE			SESE				
				NESW			NWSW			SWSW				SESW
			4	SWSE										

Ident. No. 22-07690

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name: STANFORD HUFF 208-354-2333
Address: BOX 483
DRIGGS, ID 83422
OR
Name: JAMES HATCH 208-354-8248
DRIGGS, ID 83422

2. Source: GROUNDWATER Trib. to:
3. Location of Point of Diversion: SENW Sec. 5, Township 05N, Range 45E
TETON County

4. Water will be used for the following purposes:

Purpose	From	To	CFS	(or)	AF
IRRIGATION	04/15	10/15	4.380		

5. Total quantity appropriated is:
4.380 CFS (and/or) AF

6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc.
WELL AND PUMP TO SPRINKLERS
b. Height of storage dam feet; active reservoir capacity
acre-feet; total reservoir capacity acre-feet; period of
year when water will be diverted to storage: to inclusive.
c. Proposed well diameter is 16 inches; proposed depth of well is 200
feet.
d. Is groundwater with a temperature greater than 90F being sought? NO

7. Time required for the completion of the works and application of
the water to the proposed beneficial use is 3 years

8. Description of proposed uses:
IRRIGATION- IN USE SINCE 1978 *

APR 19 1991

9. Place of Use: IRRIGATION

TWN	RGE	SEC	ACRES	ACRES	ACRES	TOTAL
05N	45E	5	NWNE 40	SWNE 19	NENW 40	
			NWNW 40	SENW 40	NESW 40	219
Total number of acres irrigated:						219

10. Describe any other water rights used for the same purposes.
RIGHTS ON SOUTH LEIGH CREEK

11. a. Who owns the property at the point of diversion?

APPLICANTS

b. Who owns the land to be irrigated or place of use?

APPLICANTS

c. If the property is owned by a person other than the applicant,
describe the arrangement enabling the applicant to make this filing.

12. Remarks:

13. Map of proposed point of diversion and place of use attached? ☒

BE IT KNOWN that the undersigned hereby makes application for permit to
appropriate the public waters of the State of Idaho as herein set forth.

Stanford Huff
Applicant

Received by HWS Date 1-8-91 Time 1:49 Preliminary check by _____

Fee \$ 125-50 Receipted by HWS # E015584 Date 1-8-91

Publication prepared by LB Date 2-21-91 Published in Teton Valley News

Publication approved LB Date 3-12-91

REGISTERED

APR 19 1991