



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
GARY SPACKMAN, Interim Director

March 11, 2010

JERRY KISER
STOPPELLO & KISER
620 W HAYS ST
BOISE ID 83702

Re: Applications for Transfer Nos. 73827 & 73829 for Middleton Mill Ditch Co.
and Middleton Irrigation Association Inc.

Dear Jerry:

Recently we discussed the above referenced applications to change minor amounts of irrigation to a non-irrigation use within the companies' service area. The reduction in irrigation will mitigate for consumptive use associated with shallow ground water ponds in two developments.

Prior approvals in this regard have included different beneficial use terms for mitigation practices. Terminology has changed over time based on the preferences of different applicants in addition to evolving policy of the Idaho Department of Water Resources (IDWR). Prior approvals of this practice for your clients have included ground water recharge and, in at least one case, diversion to storage for ground water recharge storage. The two pending applications propose additional ground water recharge use for mitigation purposes.

Complex issues surrounding ground water recharge in other parts of the state, including subordination and other issues, have resulted in more rigorous IDWR requirements for approving ground water recharge as a beneficial use. This in turn has led to IDWR recommendations for mitigation transfers in the local area to use a term other than ground water recharge to avoid complexities and problems linked to ground water recharge. Instead, IDWR recommends using a non-irrigation term more compatible with the other applications that require mitigation in order to be approved. For the above applications, aesthetic use is more appropriate for the transfers to mitigate for ponds proposed in pending Applications for Permit Nos. 63-32171 (Lakes at Telaga Subdivision, transfer 73827) and 63-32600 (Eaglefield Subdivision, transfer 73829).

IDWR suggests the transfer applications be amended to use current non-irrigation beneficial use terms to avoid ground water recharge issues. Amending the applications should also include redefining prior ground water recharge approvals to simplify and clarify the water right records. This is a semantic change, not a substantive change. This semantic change will not adversely affect your clients' water rights in any way. Current thinking includes using the following terms to describe mitigation for these transfers:

- "Diversion to Storage" – cfs rate for acres retired from irrigation
- "Aesthetic Storage" – acre-feet volume (consumptive use) for acres retired from irrigation.

Amending these transfer applications to update previously approved non-irrigation uses and proposed non-irrigation uses to current beneficial use terms and methodology would assume approximately 0.02 cfs (standard duty of water) and 3.5 af (standard consumptive use) for each acre of reduced irrigation. Transfer approvals would confirm the remaining irrigation and non-irrigation uses to fully protect the total amounts of the water rights.

The following information compares the water rights prior to transfer applications 73827 and 73829 and after approval of those applications based on amending the applications as suggested.

Table 1. Rights 63-125G and 63-198AC Prior to Transfers 73827 & 73829.

RIGHT	USE	CFS	ACRE FEET	ACRES	NOTES
63-125G	Irrigation	32.11	undefined	9404	Undefined volume is standard procedure in many rights, not problematic in transfer applications
	Div to Storage	0.32	undefined	NA	
	GW Recharge Storage	NA	47.2	NA	
	Total	32.43	undefined	9404	
63-198AC	Irrigation	109.89	undefined	9404	AF listed in conditions
	GW Recharge	0.20	35.0	NA	
	Total	110.09	Undefined	9404	

Transfer applications 73827 and 73829 propose "1:1 swaps" to mitigate ponds covering 22.5 acres: 19 acres at Lakes at Telaga Subdivision plus 3.5 acres at Eaglefield Subdivision:

- Transfer 73827 listed 13.5 acres but 16 shares from 63-125G plus 2.5 acres and 3 shares from 63-198AC, for a total of 16 acres but 19 shares. The transfer should probably list 16.5 acres from 63-125G to increase the total to 19 acres.
- Transfer 73829 listed 3.5 acres from 63-198AC (# of shares not described).
- Assuming Transfer 73827 is amended to reduce 19 acres of irrigation, the total reduction under both transfers is 22.5 acres (19 + 3.5) to match the pond acres for the two subdivisions.

The reduced irrigation rate of flow in each transfer is acceptable:

- Transfer 73827 reduces 63-125G by 0.32 cfs (assumed 16.5 acres) and 63-198AC by 0.06 cfs (2.5 acres)
- Transfer 73829 reduces 63-198AC by 0.07 cfs (3.5 acres).
- Total reduction for 63-198AC is 0.13 cfs.

Proposed results of amending prior and proposed transfer approvals are reflected below.

Table 2. Prior and Proposed Non-Irrigation for Rights 63-125G and 63-198AC.

RIGHT	EXISTING		PROPOSED		TOTAL	
	CFS	AF	CFS	AF	CFS	AF
63-125G	0.32	47.2	0.32	16.5 X 3.5 = 57.8	0.64	105
63-198AC	0.20	35	0.13	6 X 3.5 = 21	0.33	56
TOTAL	0.52	82.2	0.45	78.8	0.97	161

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Table 3. Rights 63-125G and 63-198AC After Transfers 73827 & 73829.

RIGHT	USE	CFS	ACRE FEET	ACRES
63-125G	Irrigation	31.79	undefined	9381.5
	Div to Storage	0.64	undefined	NA
	Aesthetic Storage	NA	105	NA
	Total	32.43	undefined	9381.5
63-198AC	Irrigation	109.76	undefined	9381.5
	Div to Storage	0.33	undefined	NA
	Aesthetic Storage	NA	56	NA
	Total	110.09	undefined	9381.5

The net result follows:

- Pending transfers reduce total irrigation in the service area by 22.5 acres: $9404 - 22.5 = 9381.5$.
- Right 63-125G non-irrigation is increased by 0.32 cfs and 57.8 af, but total cfs remains the same.
- Right 63-198AC non-irrigation is increased by 0.13 cfs and 21 af, but total cfs remains the same.
- Both rights will include current terms for non-irrigation: "diversion to storage" and "aesthetic storage."

The transfer applications can be amended by completing and returning the enclosed form. No additional fees are needed. No additional legal notices are required. The transfer applications and their related permit applications can be approved immediately upon IDWR receipt of the completed form. To simplify matters, IDWR will approve both amended transfer applications in a single approval, to be renumbered as Transfer 76211.

Please let me know if you have any questions or concerns. Thank you for your help in resolving these four applications.

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosure

**AMENDING TRANSFER APPLICATIONS 73827 AND 73829
TO BE APPROVED AS TRANSFER 76211**

I approve amending the above referenced transfer applications to update prior transfer approvals and to update these applications to reflect current beneficial use terms for non-irrigation uses within the service area of my irrigation organization.

I understand this does not require additional legal notice. Furthermore, amending the applications does not adversely affect the water rights for the service area.

Amending the transfer applications will result in approval of Transfers 73827 and 73829 in a single transfer approval, designated by IDWR as Transfer 76211.

Transfer 76211 will include the following beneficial uses, amounts of water and irrigated acres:

RIGHT	USE	CFS	ACRE FEET	ACRES
63-125G	Irrigation	31.79	undefined	9381.5
	Div to Storage	0.64	undefined	NA
	Aesthetic Storage	NA	105	NA
	Total	32.43	undefined	9381.5
63-198AC	Irrigation	109.76	undefined	9381.5
	Div to Storage	0.33	undefined	NA
	Aesthetic Storage	NA	56	NA
	Total	110.09	undefined	9381.5

Signatures:

Middleton Mill Ditch Co.

_____	_____	_____
Name	Title	Date

Middleton Irrigation Association Inc.

_____	_____	_____
Name	Title	Date