



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

February 18, 2010

Dale & Jackie VanEs
8222 Desert Dr
Marsing ID 83639

Leslie & Lavada C Loucks
5985 Dunlap
Marsing ID 83639

Lori Graves
SPF Water Engineering LLC
300 E Mallard DR Ste 350
Boise ID 83706

RE: Water Right Transfer #74776 VanEs- Preliminary Order Approval

Dear Parties:

Petition for Reconsideration

A preliminary order for approval of the above Transfer was issued on 02/04/10. On February 10, 2010, this office received a petition for reconsideration from Mrs. Loucks, see attached. The petition alleges the VanEs's (Applicants) have a land sale contract with the Loucks on the transfer place of use lands. The water rights should be returned to the Loucks. On February 16, 2010, I was faxed a copy of a Notice of Contract of Sale and lands list between VanEs and Loucks.

Authority to File a Transfer

If the applicant's name does not match the Department's records for the current owner of the right(s) sought to be transferred, the applicant must provide evidence of the current ownership or authority to make the proposed changes(s). Adequate documentation can be a warranty/other deed, title, contract of sale, or documentation authorizing the Applicant authority to make the change. In review and processing of the transfer application it appeared the Applicants had met the possessory interest criteria and authority to file the transfer application. Our conversations with Lori Graves (Consultant) also seemed to confirm this. However, there appears now to be a cloud over the Applicant's authority to file the transfer given the petition and new documents. Under the water statutes and rules, the Applicant bears the burden of supplying sufficient information and proof.

Options

Our water statutes and rules provide several options that may assist parties with security interests. Parties may desire to consult with an attorney concerning these matters. Options could include:

- File a "Notice of Security Interest in a Water Right." The party will be notified of any ownership change, action to amend, transfer, or modification to the water right, ref. Idaho Code (IC) 42-248(6). An application form is enclosed.
- Ownership of the water rights could list both parties—with proper documentation
- The transfer could be authorized with the water rights remaining in the original owner's name.
- Withdraw the transfer.

Letter Notice

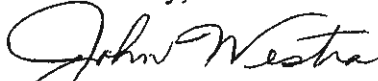
Pursuant to IC 67-5243, this letter will serve as notice the Department is acting on the Petition for Reconsideration received by requesting the Applicant provide the following:

- Address the Louck's Petition for Reconsideration. If the Loucks have a security interest in the transfer listed place of use lands and there is a contract, provide the entire contract copy with detailed terms and conditions. A contract notice and land list are not acceptable.*
- Provide mortgages, contracts, & loans copies with all other parties (banks, individuals, corporations, etc) that also have a security interest in the property. There seems to be some confusion whether Wells Fargo or DL Evans Bank is a mortgage holder.*
- Provide written statements from all parties having an interest in the lands listed as the place of use. The statement(s) must grant the Applicant authority to make water right(s) changes under transfer # 74776.*

The requested information and authority statement(s) shall be submitted to this office on or before **May 1, 2010**. If the information/statements are inadequate, parties will not grant authority, or the Applicant fails to respond by the deadline, the transfer will be ordered revoked/rejected without notice.

Should you have questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,


John Westra, Manager

Enclosure: security interest form, transfer withdrawal, & Loucks' petition