



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Interim Director

August 10, 2009

CHARLES E BROCKWAY PHD PE
BROCKWAY ENGINEERING PLLC
2016 N WASHINGTON STREET SUITE 4
TWIN FALLS ID 83301

RE: Applications for Transfer – KBCP LLC (35-2172) and Salmon Falls Land
and Cattle (2-7249 and 2-7462)

Dear Mr. Brockway:

I have received your letter dated July 20, 2009 regarding the transfer applications referenced above. In your letter you raised questions about Department policy for permissible places of use (PPU) and injury analysis using combined ESPA model reaches as applied to the transfer applications.

Permissible Place of Use (PPU)

You are correct in your understanding that the Department does authorize water rights where the acreage that can be irrigated in one season is limited within a larger defined PPU. The Department has limited written policy on the use of PPU descriptions and the practice has evolved over time as water right enforcement has increased. The PPU concept was originally adopted with the goal to provide some flexibility to the water right owner and avoid the requirement to file a transfer every time a place-of-use change was anticipated within an area where crops would be rotated under their farming operation.

As more water districts have been established since SRBA decrees have been issued, expectations have been raised to administer water rights based on those decrees. Experience has shown that it can be difficult to confirm compliance with acre limits within a PPU unless the watermaster or Department staff is notified of the location where irrigation is anticipated within the PPU. This is especially true where a PPU is significantly larger than the acres authorized to be irrigated in one season under the right(s).

To continue to allow flexibility to the water user without diminishing the Department's or watermaster's ability to administer the rights, the Department has recently applied conditions requiring those larger PPU's to clearly identify the acres intended for irrigation within the PPU and to provide notice to the Department when changes are anticipated. The Department has used the following condition on approvals:

This right is limited to the irrigation of a specific <00.0 acres> within the <00.0 acre> place of use authorized by this right in a single irrigation season. The specific <00.0 acres> to be irrigated by the right holder shall be identified prior to use by submittal of a land list and a representative electronic shape file or by submittal of a land list and a map sufficiently detailed to allow creation of an electronic shape file to be associated with this right in the geographic information system component of the water rights database maintained by the department. Before changing the <00.0 acres> to be irrigated within the <00.0 acre> place of use, the right holder shall submit a new land list and representative electronic shape file or map to the department prior to the irrigation season in which the change will occur.

Another situation where a PPU might be requested is when the specific location of irrigated acres has not been finally determined within a larger planned project where irrigation may not be the primary purpose of the project (e.g. a 2-acre picnic area within a large industrial complex that covers multiple 40-acre tracts). An application providing for some alternate locations (not the entire complex) could be processed using a PPU. If approvable, the Department will condition a transfer approval to require the water right owner to report the as-built location and provide for an update of the Department's records to limit the place of use to the reported location. For a permit, the Department will confirm the as-built location when conducting a beneficial use field exam and issue a license where the use has been developed.

In your letter you also requested clarification of the need for a PPU to be limited to irrigable acres. Applicants often propose creation of a PPU to include all lands under their ownership, whether irrigable or not. Although a PPU based on ownership boundaries may be easier to describe, experience has shown that such descriptions create ambiguities for compliance efforts and can create complications when ownership changes occur that would split the water right(s). The Department is not intending to require the applicant (or the Department) to make a determination of irrigable acres for all lands within the PPU; however, it is reasonable to expect exclusion of lands that will not be irrigated in the foreseeable future due to water features, lands with excessive slope, roadways and parking lots, or other obstacles that would prevent irrigation. For a permit, the Department will confirm the irrigation locations when conducting a beneficial use field exam and issue a license limiting any PPU to those lands that have actually been part of the irrigation rotation.

Combining Reaches in ESPA Transfer Analysis

Your letter also asked for clarification of the use of combined ESPA model reaches for transfer injury analysis. You noted that former Director Tuthill indicated that utilization of the combined Near Blackfoot to Minidoka reach for determining Snake River reach depletion should be considered for transfer 75147. Transfer 75147 proposed a change in point of diversion from a well located just south of the upper part of American Falls Reservoir to a well located near the river just below the dam at American Falls Reservoir. The combination of the Near Blackfoot to Neeley reach with the Neeley to Minidoka reach was considered acceptable for injury analysis using the ESPA model due to the proximity of the wells to the river, the distance of the move, and location of existing points of diversion and priority dates for rights from the Snake River

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within the reaches. Similar circumstances for the KBCP LLC transfer justify the same consideration.

I hope this letter provides the clarification you need to submit the applications to the Department for processing.

Sincerely,



Gary Spackman
Interim Director

cc: Lyle Swank - Eastern Region IDWR
Allen Merritt - Southern Region IDWR
Shelley Keen - IDWR State Office