

Stanton, Jim

From: Balthasar.Buhidar@deq.idaho.gov
Sent: Thursday, December 10, 2009 4:09 PM
To: Stanton, Jim
Cc: Balthasar.Buhidar@deq.idaho.gov; mike.mcdonald@idfg.idaho.gov
Subject: DEQ Comments on an Application for Transfer 70893

EMAIL MEMORANDUM

Date: December 10, 2009

To: Mr. Jim E. Stanton, Senior Water Resource Agent
FROM: Dr. Balthasar B. Buhidar, DEQ - Regional Manager, Water Quality Protection

Re: Application for Transfer No. 70893

The DEQ was visited by Mr. Robert Myers relative to IDWR's Transfer No. 70893 on Cedar Draw. He requested that DEQ make comments on the proposed transfer based on a letter from IDWR (Dated November 30, 2009) in which no comments were received by IDFG or DEQ. In addition, the IDWR letter states that Mr. Myers did not request additional time to receive comments on the proposed transfer. Thus, Mr. Myers has until December 14, 2009 to obtain comments from IDFG and DEQ; else the IDWR will issue an order rejecting the proposed application for transfer.

DEQ has reviewed the IDWR Application for Transfer No. 70893 on Cedar Draw as it pertains to the transfer of 5 cfs above the Crystal Springs Hydropower Plant (which resides upstream of the Cedar Draw Fish Hatchery which is now defunct) to a "new" set of ponds owned by Mr. Robert Myers. DEQ understands the following:

1. Mr. Robert Myers has purchased the proposed place of use and a portion of the associated water right.
2. Mr. Robert Myers needs a change to the point of diversion and place of use as allowed by the purchase.
3. The existing water rights include 47-21245 and 47-7464.
4. The total diversion rate involved is 5.36 cfs and will involve water right No. 47-2145, which present is for irrigation and domestic use for 0.36 cfs (for 18 acres).
5. Approximately 200 share of the Twin Falls Canal Company are also involved to which 66 shares are appurtenant to the purchased property.
6. The 5.36 cfs being transferred will be used for new cold water ponds and will not be co-mingled with the geothermal groundwater already being used on other ponds on this property.
7. The 5.36 cfs cold water will not be used for commercial fish production as historical was used in the past.
8. At the present time the recommended point of diversion for the irrigation right is incorrect. Thus, the transfer will presumably take care of this error. In addition, the 5.36 cfs will be used for 5.00 cfs for recreation and 0.36 for irrigation (as defined in the original water right).

DEQ also notes the following from IDAPA §58.01.02.050.01, Apportionment of Water: "The adoption of water quality standards and the enforcement of such standards is not intended to conflict with the apportionment of water to the state through any of the interstate compacts or court decrees, or to interfere with the rights of Idaho appropriators, either now or in the future, in the utilization of the water appropriations which have been granted to them under the statutory procedure, or to interfere with water quality criteria established by mutual agreement of the participants in interstate water pollution control enforcement procedures." DEQ's understanding is that the proposed application for transfer will not conflict with water quality standards and the enforcement of such standards specific to Cedar Draw due the rights of Idaho appropriators, either now or in the future, in the procurement of this proposed transfer of water. Therefore,

1. **TMDL Provisions and Water Quality Standards.** Cedar Draw, a tributary of the Snake River, is a Section 303(d) listed water body under the federal Clean Water Act. An approved total maximum daily load (TMDL) is presently under implementation for restoration of beneficial uses and water quality standards. DEQ understands that the proposed transfer will not violate Idaho's Water Quality Standards as set forth in

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IDAPA 58.01.02 and therefore will not violate any provisions of the approved Upper Snake Rock TMDL.

2. Fish Production Provisions. No fish production facilities are proposed for construction with this transfer. Therefore, permits for fish production are not required from EPA, IDFG or IDA. Should this become a viable consideration in the future, the applicant is required to contact EPA, IDFG and IDA for permit considerations.
3. FERC Minimum-Flow Requirements. DEQ understands that the FERC minimum-flow requirements that are associated with the Crystal Springs Hydropower Plant (FERC No. 8278) will not be affected by the proposed transfer.

Therefore, DEQ has no substantial objections to the proposed transfer, assuming that the TMDL provisions, Water Quality Standards, Fish Production Provisions, and FERC Minimum-Flow Requirements are not affected or violated by the proposed transfer.

If you have any concerns or questions, please contact me directly.

Best Regards,

Dr. Balthasar B. Buhidar, Ph.D.
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"The future is predetermined by the character of those who shape it."

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