

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. 75801

MINIMUM REQUIREMENTS CHECKLIST
TO BE SUBMITTED WITH APPLICATION FOR TRANSFER

An application for transfer must be prepared in accordance with the minimum requirements listed below to be acceptable for processing by the Department. Incomplete applications will be returned. The instructions, fee schedule, Part 2A reports and additional Part 2B forms are available from any Department office or on the Department's website at <http://www.idwr.idaho.gov/>.

Check whether each item below is *attached* (Yes) or *not applicable* (N/A) for the proposed transfer.

Yes N/A * Means the item is always required and must be included with the application.

- ☒ * Completed Application for Transfer of Water Right form, Part 1.
- ☒ * Signature of applicant(s) or applicant's authorized representative on Application for Transfer Part 1. Include evidence of authority labeled Attachment #3 (see below) if signed by representative.
- ☒ * Application for Transfer Part 2A. Attach a Part 2A report describing each water right in the transfer as currently recorded.
- ☐ ☒ Complete and attach an Application for Transfer Part 2B for each water right for which only a portion is proposed to be changed through this transfer application
- ☒ * Application for Transfer Part 3A is always required (see Attachment #7a below); Parts 3B and 3C must be completed for transfer applications proposing to change the nature of use of the water right(s) or proposing changes to supplemental right(s).
- ☒ * Correct fee submitted with transfer application form. (Fee schedule is on website and instructions for application for transfer.)

Attachments to Application - Label each attachment with the corresponding number shown below as Attachment #1-9.

- ☐ ☒ #1 If the applicant is a business, partnership, organization, or association, and not currently registered in the State of Idaho as a business entity, attach documentation identifying officers authorized to sign or act on behalf of right holder. (See Part 1.)
- ☐ ☒ #2a Water Right ownership documentation if Dept. records do not show the transfer applicant as the current water right owner.
- ☐ ☒ #2b If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s).
- ☐ ☒ #3 Documentation of authority to make the change if the applicant is not the water right owner.
- ☐ ☒ #4 Power of Attorney or documentation providing authority to sign or act on the applicant's behalf. (See Part 1.)
- ☐ ☒ #5 If the transfer application proposes to change the point of diversion for a water right affecting the Eastern Snake Plain Aquifer (ESPA), attach the results of an ESPA analysis and a detailed mitigation plan to offset any depletions to hydraulically connected reaches of the Snake River. ESPA transfer spreadsheet and model grid labeled cells are available on the Department's website at <http://www.idwr.idaho.gov/water/rights/>.
- ☐ ☒ #6 Notarized statement of agreement or a statement on official letterhead signed by an authorized representative from each lien holder or other entity with financial interest in the water right(s) or land affected by the proposed transfer. (See Part 1.5.c.)
- ☒ * #7a Attach a map identifying the proposed point(s) of diversion, place(s) of use, and water diversion and distribution system details as described on the application. Include legal description labels. If only a portion of the right is proposed to be changed, identify the current location of the part of the existing right(s) proposed to be changed. (See Part 3A.)
- ☐ ☒ #7b If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use.
- ☐ ☒ #8a If the transfer application proposes to change the nature of use or period of use for one or more rights, provide documentation describing the extent of historic beneficial use for the water rights proposed to be transferred and document how enlargement will be avoided. (See Part 3B.)
- ☐ ☒ #8b If the transfer application proposes to change the place of use of a supplemental irrigation right, provide documentation regarding the historic use of the supplemental right(s) and availability or reliability of the primary right(s) being supplemented, both before and after the proposed change. (See Part 3C.)
- ☐ ☐ #9 Other. Please describe: _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

Transfer No. _____

RECEIVED

JUL 21 2009 APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1WATER RESOURCES
Name of Applicant(s) Michael and/or Linda Mihalka Phone 208 584-3707Mailing address 11720 N. Hwy. 52 Horseshoe Bend, ID. 83629 Email mmhik@speedyquick.net

- ☐ If applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign or act on behalf of the applicant. Label it **Attachment #1**.
- ☐ Attach water right ownership documentation if Department records do not show the transfer applicant as the current water right owner. Label it **Attachment #2a**.
- ☐ If the ownership of the water right will change as a result of the proposed transfer to a new place of use, attach documentation showing land and water right ownership at the new place of use. Include documentation for all affected land and owner(s). Label it **Attachment #2b**.
- ☐ Attach documentation of authority to make the proposed change if the applicant is not the water right owner. Label it **Attachment #3**.

Provide contact information below if a consultant, attorney, or any other person is representing the applicant in this transfer process.

☒ No RepresentativeName of Representative N/A Phone _____Mailing address N/A Email _____

- ☐ Send all correspondence for this application to the representative and not to the applicant.
- OR
- ☐ Send original correspondence to the applicant and copies to the representative.
- ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant.
- OR
- ☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation providing authority to sign for the applicant and label it **Attachment #4**.

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Signature of Applicant or Authorized Representative

Michael J. Mihalka
Print Name and Title if applicableJuly 17, 2009
Date

Signature of Applicant or Authorized Representative

Linda J. Mihalka
Print Name and Title if applicableJuly 17, 2009
Date

A. PURPOSE OF TRANSFER

1. ☒ Change point of diversion ☐ Add diversion point(s) ☐ Change place of use
☐ Change nature of use ☐ Change period of use ☐ Other _____
2. Describe your proposal in narrative form, including a detailed description of non-irrigation uses to justify amounts transferred (i.e. number of stock, etc.), and provide additional explanation of any other items on the application. Attach additional pages if necessary and label it **Part 1A.2**. For irrigation purposes, pasture use, grow hay and raising livestock. Currently have 2 head horses, 5 goats, 2 calves and numerous chickens.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

B. DESCRIPTION OF RIGHTS AFTER THE REQUESTED CHANGES. IF THE RIGHTS ARE BEING SPLIT, DESCRIBE PORTIONS TO BE CHANGED AS THEY WOULD APPEAR AFTER THE REQUESTED CHANGES.

1.	Right Number	Amount (cfs/ac-ft)	Nature of Use	Period of Use	Source & Tributary
☒ All or ☐ Part	65-02590B	0.08 CFS	Irrigation	04-01 to 11/01	Payette River/Snake River
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	
☐				to	

Total authorized under rights 0.08 cfs and/or _____ ac-ft

2. Total amount of water proposed to be transferred or changed 0.08 cubic feet per second and/or _____ acre-feet per annum.

3. Point(s) of Diversion:

- ☐ No changes to point(s) of diversion are proposed-the following chart is therefore not completed. (Proceed to #4.)
- ☐ Attach Eastern Snake Plain Aquifer analysis if this transfer proposes to change a point of diversion affecting the ESPA. Label it **Attachment #5**.

New ?	Lot	¼	¼	¼	Sec	Twp	Rge	County	Source	Local name or tag #
					24	7N	1E	Gem	Payette River /connection	

4. Place of use: (If irrigation, identify with number of acres irrigated per ¼ ¼ tract.)

- ☒ No changes to place of use are proposed-the following chart is therefore not completed. (Proceed to #5.)

Twp	Rge	Sec	NE ¼				NW ¼				SW ¼				SE ¼				Acre Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total Acres (for irrigation use) 4.2

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 1 Continued

5. General Information:

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future: Drill well to show river source connection, pump and sprinklers.

- b. Who owns the property at the point(s) of diversion? Applicants

If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system: N/A

- c. Are the lands from which you propose to transfer the water right subject to any liens, deeds of trust, mortgages, or contracts?

If yes, ☐ Attach a notarized statement from the holder of the lien, deed of trust, mortgage or contract agreeing to the proposed changes on official letterhead signed by an authorized representative. Label it **Attachment #6**. List the name of the entity and type of lien: N/A By adding a point of diversion to our land currently served by the same water right will NOT adversely impact the property value.

It is the applicant's responsibility to provide notice to lien holder, trustee, mortgagor, or contract holder of the proposed changes that may impact or change the value of the water rights or affected real property. Any misrepresentation of legal encumbrance on this application may result in rejection of the application or cancellation of an approval.

- d. Describe the effect on the land now irrigated if the place or purpose of use is changed pursuant to this transfer: None

- e. Describe the use of any other water right(s) for the same purpose or land, or the same diversion system as right(s) proposed to be transferred at both the existing and proposed point(s) of diversion and place(s) use: None

- f. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right, or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the rights?

If yes, describe: Beginning in 2005, James & Judith Peterson and Eugene & Joni Shepherd, members of our Homeowner's Irrigation Association, prevented our access and use of the irrigation water and system. Peterson's constructed a fence over the historical access to the pump and denied the remaining three (3) property owners access to the pump for irrigation and filed a lawsuit in the Gem County District Court. Shepherds, together with the Petersons, effectively denied us use by keeping the riser on their property open and diverting water.

**IDAHO DEPARTMENT OF WATER RESOURCES
APPLICATION FOR TRANSFER OF WATER RIGHT
PART 2A**

Current Water Right No.: 65-025908

Current Owner: MIKE MIHALKA
LINDA MIHALKA

Priority Date: 4/18/1964

Origin: Water Right

Status: Active

Basis: Decreed

Source
PAYETTE RIVER

Tributary
SNAKE RIVER

Beneficial Use	From To	Diversion Rate	Annual Volume
IRRIGATION	4/01 to 11/01	0.08 CFS	
	Total Diversion	0.08 CFS	

Location of Point(s) of Diversion

PAYETTE RIVER L1(NE1/4SW1/4NE1/4) Sec. 25, Twp 07N, Rge 01E B.M.
GEM County

PAYETTE RIVER L1(SW1/4SE1/4) Sec. 24, Twp 07N, Rge 01E B.M.
GEM County

Place of Use

IRRIGATION Within GEM County

T07N R01E S24 Lot 1 SESE 4.20

Total Acres: 4.2

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.

Decreed Date: 6/28/2002

Attachment 2A

Total Acres (for irrigation use)

"7a"

Legend

- ESPA
- Countries
- GCDB Township/Range
- GCDB Section
- GCDB Quarter-Quarter



RECORD OF SURVEY

TRACT OF LAND SITUATED IN A PORTION OF GOVERNMENT LOT 1, OF SECTION 24, AND GOVERNMENT LOT 2, OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 1 EAST, BOISE MERIDIAN, GEM COUNTY, IDAHO.

BASIS OF BEARINGS:

THE BASIS OF BEARINGS FOR THIS DRAWING IS THE CENTER LINE OF STATE HIGHWAY 58, THROUGH LOT 1 OF SECTION 24, TOWNSHIP 7 NORTH, RANGE 1 EAST, BOISE MERIDIAN, AS SHOWN ON THE "REVISED AS COMPLETED" AUGUST 1980 PLANS FOR FEDERAL AID PROJECT NO. W-55-214, I.A. 5 0277 W.

LEGEND:

- FOUND BRASS CAP MONUMENT
- FOUND 5/8" IRON PIN
- FOUND 1/2" IRON PIN
- FOUND DISCHARGE STONE - REPLACED WITH 5/8" IRON PIN
- FOUND ALUMINUM CAP STAMPED PLS 4128
- FOUND DISCHARGE STONE - REPLACED WITH A 5/8" IRON PIN W/PLASTIC CAP PLS 4100
- SET 1/2" IRON PIN W/PLASTIC CAP PLS 4100
- SET LEAD AND TACK IN A 2"X8"X10" HIGH GRANITE ROCK
- MEANOR LINE
- BARBED WIRE FENCE

NOTE:

FISCHER LAND SURVEYING, INC. ASSURES NO LIABILITY FOR FINANCING OR PROVIDING COMPLIANCE OR NON-COMPLIANCE WITH COUNTY PLANNING AND ZONING ORDINANCE RESTRICTIONS AS THEY PERTAIN TO BUILDING PERMITS AND THE ISSUANCE THEREOF.

SURVEY FOR:

MITE & JACQUE KONTCHENKO
11500 N. HWY 52
HOMERIDGE, IDAHO 83429
(208) 284-1391

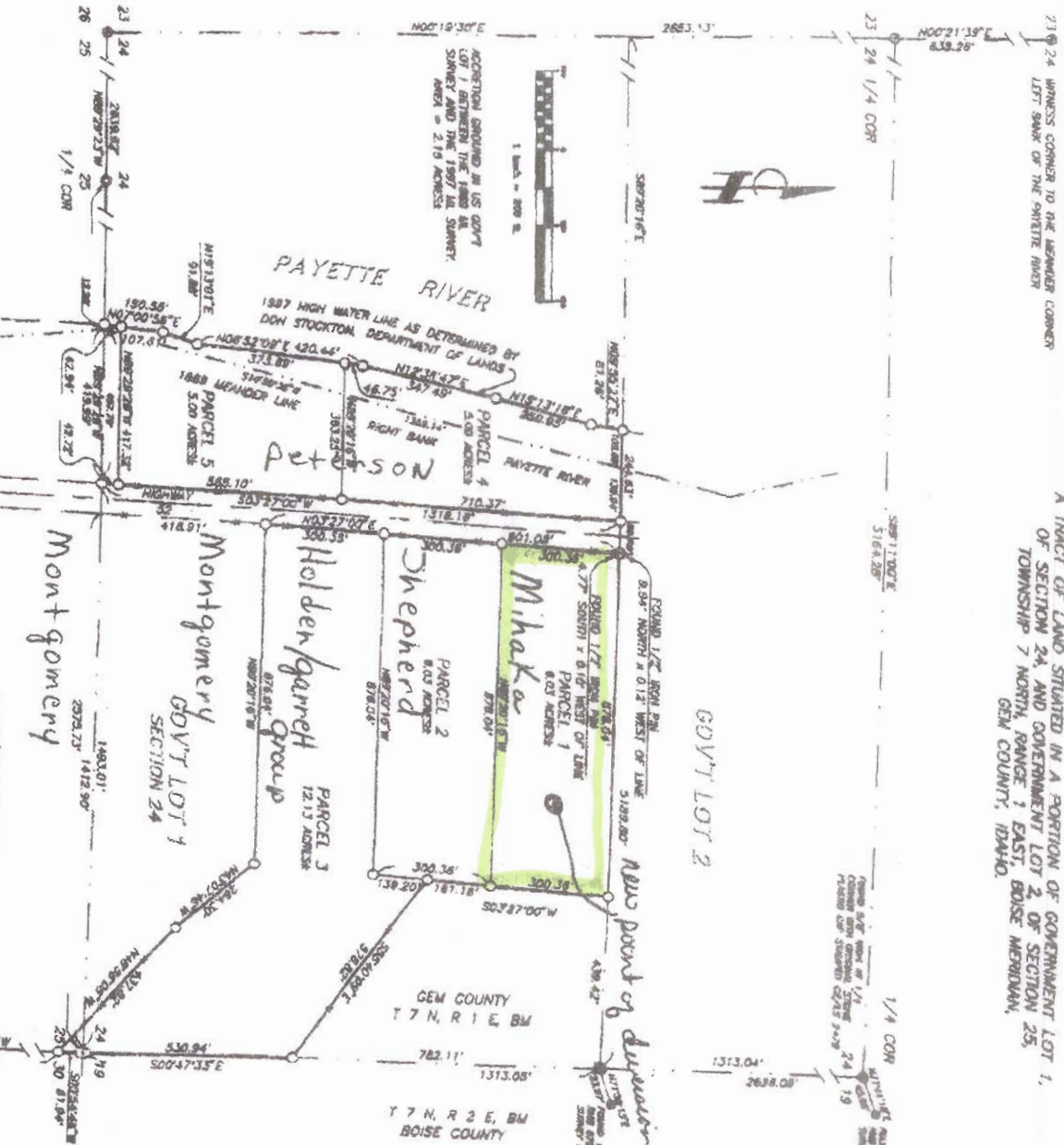
Fischer Land Surveying, Inc.

PROFESSIONAL LAND SURVEYING
404 So. Washington Ave.
Ermitt, Idaho 83617
Phone: (208) 365-4146

Inst. No.: 166264

STATE OF IDAHO }
COUNTY OF GEM } SS

Recorded at the request of
Title Surveying
Date: 7/1/97
Book: 166264
Page: 166264
Recorded as a Survey
Theresa R. Ketchum, Clerk
Ex-officio Recorder
Judy Stephens
Fee \$1.00
Copy



INDEX No. 711-24-2-2-0

JULY 1997
JOB NO. 27-97(R05)

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TRANSFER OF WATER RIGHT
PART 3

A. PLAT MAP (See Part 3A of Instructions for application for transfer for complete requirements.)

- ☒ Attach a map of the diversion, measurement, control, and distribution system. Label it **Attachment #7a**.
- ☐ If the transfer application proposes to change the place or purpose of use of an irrigation right attach a Geographic Information System (GIS) shape file, or an aerial photo or other image clearly delineating the location and extent of existing acres and changes to the place of use. Label it **Attachment #7b**. If the place of use currently consists of a permissible place of use, then the attachment is not required if the application contains a clear statement that the boundaries for the place of use are not proposed to be changed by the transfer and the total number of irrigated acres within the place of use before and after the transfer is clearly stated.

B. CHANGES IN NATURE OF USE (Water Balance)

- ☐ If you propose to change the nature of use or period of use of all or part of the rights(s) listed in this application, attach documentation describing the extent of historic beneficial use of the portion of the right(s) proposed to be changed. Also attach documentation showing that the portion of the right(s) to be changed will not be enlarged in rate, volume, or consumptive use through the proposed change. Label it **Attachment #8a**.

C. PLACE OF USE CHANGES TO SUPPLEMENTAL IRRIGATION RIGHTS

- ☐ If you propose to change the place of use of a supplemental irrigation right, answer below and attach supporting documentation. Label it **Attachment #8b**.

1. Describe how the supplemental water rights have been used historically in conjunction with other water rights at the existing place of use. Describe the time during the irrigation season that the supplemental rights have been used. Include information about the availability or reliability of the primary right(s) being supplemented, both before and after the change. If the applicant is proposing to change a supplemental irrigation right to a primary right, provide the information required on Part 3B above.: N/A

FOR DEPARTMENT USE ONLY

Transfer contains 6 pages and 11 ~~2~~ attachments, pages 2A, 7A, A-1
Received by SB Date 7-21-09 Prelim. Check by VWM Date 11/25/09
Fee Paid \$100- Date 7-21-09 Received by DB Receipt # W037712
Add'l Fee Paid _____ Date _____ Received by _____ Receipt # _____

4/03

State of Idaho
Department of Water Resources

RECOMMENDATION OF WATERMASTERApplication No: Amendment of Permit 65-22885Applicant's Name: Eugene M. and Joni D. Shepherd

Watermaster's Recommendation:

- a) I do not oppose approval of this application.
- b) X I do not oppose approval of this application if it is conditioned as follows: Applicant recognizes that diversion rights will become subject to watermaster control along with annual Water District assessments and rental pool fees, the same as if diversion was directly from the river.
- c) I oppose approval of this application for the following reasons:

- d) Additional Comments: _____

Dated this 20th day of March, 2005

Water District No. 65

Ron Shurtleff
Ron Shurtleff, Watermaster

Use reverse side of page if you need more space.

"A"

MEMORANDUM

DATE: April 29, 2005

TO: Water Right File 65-22885

FROM: Shelley W. Keen *SWK*

RE: Conversation with permit holders

This afternoon I spoke on the phone with permit holders Mike and Joni Shepherd about the disposition of their surface water rights, 65-2590C and 65-11272C, once their application for amendment is approved. The Shepherds said they would email or mail me a statement indicating that they're willing to use the surface water rights as mitigation for their diversion of shallow ground water under this permit. I believe the mitigation is important for three reasons.

1. There are about 20 surface water rights in Basin 65 that are junior to this permit. Amending the permit to authorize the use of shallow ground water that is hydraulically connected to the river will injure the junior surface water right holders. There are two ways to avoid the injury. One way is to advance the priority date of the permit, but there is no statutory authority for IDWR to do that. The second way is to mitigate by agreeing not to divert under the surface water right in exchange for being able to irrigate under this permit. By mitigating, the permit holders are assuring the junior appropriators that diversions under this permit will not result in less water than the juniors were accustomed to having in the river.
2. Converting the surface water rights to mitigation preserves them. Otherwise, after five years of non-use, the surface water rights are potentially subject to forfeiture. By preserving the mitigation rights, they could be converted back to irrigation if it ever becomes advantageous for the permit holders to resume the use of surface water and to give up diverting and using ground water.
3. By mitigating with the surface water rights, the permit holders allow the water district to regulate their diversions under the priorities of the surface water rights. While the surface water rights are relatively junior within the Payette River system, they still offer a better potential for saving money on storage water releases than this permit with its 2004 priority date does.

Keen, Shelley

From: joni shepherd [mjshepherd2242@yahoo.com]
Sent: Monday, May 02, 2005 7:45 AM
To: shelly.keen@idwr.idaho.gov
Subject: water rights

We, Eugene and Joni Shepherd, agree to midigate our two old rights for our new right, provided that the oldest date is attached to the new (well) right. We are of the understanding that at any time we can cancel the midigation and we will still own the two river rights and the well right-with the river rights being active and the well right with the possibility of being transfered to domestic. Please send us any information explaining the midigation, if there is any that you could provide.

Thank You,

Eugene and Joni Shepherd

P.S. Would you please give me a call when you receive this e-mail, as we will not be home and could try again from another location.

Do You Yahoo!?

Tired of spam? Yahoo! Mail has the best spam protection around
<http://mail.yahoo.com>

MEMORANDUM

Date: May 03, 2005
To: Water Right File 65-22885
From: Shelley Keen *SK*
Re: Amendment Review

The permit holders filed an application for amendment to change the approval conditions on their permit. This was considered to be the appropriate method because Idaho Code Section 42-211, which governs amendments, requires an application for amendment to be file for any "substantial changes" to the permit.

Under their original permit, the permit holders intended to drill a supplemental irrigation well below the first confining layer to prevent a direct hydraulic connection with the Payette River. When their well was drilled, they obtained a large quantity of water at the level of the river and virtually no water for a couple hundred feet below the first confining layer. In addition, the permit holders found that property ownership and easement issues prevented them from accessing their point of diversion on the river. As a result, they cannot use their primary surface water rights -- 65-2590C and 65-11292C. (I know about their inability to use surface water because I spoke with Joni Shepherd on the phone and because Steve Lester wrote on the regional office review sheet that the permit holders have surface water rights they cannot use "due to easement and/or trespass issues.") On the application for amendment, the permit holders seek relief from the requirement that they divert from below the first confining layer, and they acknowledge that the change would require their diversions under this permit to be regulated by Water District 65. They did not ask for the removal of the conditions requiring them to use their surface water rights first. However, if the ground water diverted under this right is essentially river water, then it does not make sense to require them to use their other surface water rights first. Therefore, I recommend dropping the conditions that make this right supplemental to surface water as well as the condition requiring them to divert from below the first confining layer.

The regional office staff asked if the priority date of this permit should be advanced to protect surface water users with priorities later than the 5/19/2004 priority for this permit. This issue is complicated by the fact that May 19, 2004 is the appropriate priority date against all other ground water appropriators. This issue is being resolved by requiring mitigation. See my memo of 4/29/2005 in the water right file.

The diversion rate is being reduced from 0.12 cfs to 0.11 cfs because the mitigation rights add up to 0.11 cfs. Although the mitigation place of use is only 5.8 acres, the place of use for this approval is being left at 6.0 acres in accordance with our policy of rounding when the place of use is greater than five acres.

" D "

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 65-22885

Priority: May 19, 2004

Maximum Diversion Rate: 0.11 CFS

This is to certify, that EUGENE M SHEPHERD And/Or
JONI D SHEPHERD
PO BOX 398
HORSESHOE BEND ID 83629

has applied for an amendment of a permit and the amendment is APPROVED for development of water as follows:

Source: GROUND WATER

Tributary: PAYETTE RIVER

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>
IRRIGATION	03/01 to 11/15	0.11 CFS

LOCATION OF POINT(S) OF DIVERSION:GROUND WATER L1 (SE $\frac{1}{4}$ SE $\frac{1}{4}$) Sec. 24, Twp 07N, Rge 01E, B.M. GEM CountyPLACE OF USE: IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals	
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE		
07N	01E	24																	6.0 L1	6.0

Total Acres: 6

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before July 1, 2007.
2. Subject to all prior water rights.
3. Project construction shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code and applicable Well Construction Rules of the Department.
5. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.
6. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 65.
7. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.
8. When notified by the Department, the right holder shall install and maintain a measuring device of a type acceptable to the Department as part of the diverting works.

"E"

1 of 2

State of Idaho
Department of Water Resources
Amendment of Permit

NO. 65-22885

CONDITIONS OF APPROVAL CONTINUED

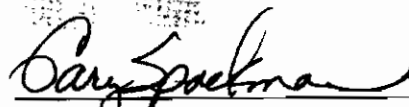
9. To mitigate for the depletion of water resulting from the use of water under this right and to prevent injury to senior water right holders, the right holder shall cease diverting and using water as authorized by the following water rights. Moreover, the official record for the following water rights will be changed to show that diversion and use of water is not authorized because the rights are being dedicated to mitigation purposes.

Right No	Priority	Use Changed to Mitigation	Mitigation Rate	Acres
65-2590C	4/19/1954	Irrigation	0.08 cf	4.2
65-11272C	6/22/1966	Irrigation	0.03 cfs	1.6

If the specified mitigation rights, or portions thereof, are sold, transferred, leased, used on any place of use, or are not deliverable due to a shortage of water or a priority call, then the amount of water authorized for diversion under this permit shall be reduced by the same proportion as the reduction to the mitigation rights, or the right holder shall the right holder shall cease diversion, shall rent water from the Payette River Rental Pool, or shall otherwise mitigate the depletion of water caused by this water use.

10. For the purposes of regulating surface water rights in Water District 65, the diversion and use of water under this right shall be regulated and administered according to the priority dates of the mitigation rights.
11. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.

This amendment of permit is issued pursuant to the provisions of Section 42-211, Idaho Code. Witness the signature of the Director, affixed at Boise, this 4th day of May, 2005.


KARL J DREHER, Director

MEMORANDUM

DATE: May 5, 2005

TO: Water Right Files 65-2590C and 65-11272C

FROM: Shelley W. Keen *SK*

RE: Nature of Use Changed to Mitigation

Approval condition no. 9 of the amendment to Permit 65-22885 changed the purpose of use of Rights 65-2590C and 65-11272C to "mitigation". The intent is for these two rights to remain undiverted in exchange for the opportunity to divert water and irrigate under Permit 65-22885.

COMMENTS:

For 65-2590 A,B,C,D,E AND 65-11272 A, B,C,D

See each individual file for maps and split tree. Whole number rights as decreed were shown on map with warranty deeds of splits overlaid to determine amount of acreage each split would get.

65-2590 for 85 acres and 1.7 cfs was split into:

- Second point of diversion was added in Sec 24 SWSE, as per documentation provided. Original point of diversion in Sec 25 SWNE is in use also. Change occurred prior to 1987.
- A Montgomery 2.8 acres in Sec 24 SESE, all land in Sec 25 stays with Montgomery and 1.26 cfs.
- B Herman 4.2 acres .08 cfs – New owners Mihalka.
- C Shepard 4.2 acres .08 cfs
- D Holden 3.8 acres .08 cfs
- E Peterson 10 acres and .2 cfs

65-11272 for 47 acres and .94 cfs was split into:

- A Shobel 7 acres .14 cfs – part of this right will now go to Holstein.
- B Montgomery 27.7 acres .55 cfs
- C Shepard 1.6 acre .03 cfs
- D Holden 10.7 acres .22 cfs

Linda Mihalka

From: mjmihalka@micron.com
Sent: Monday, July 30, 2007 3:32 PM
To: lhenrie@speedyquick.net
Subject: FW: Denial of irrigation

From: mjmihalka
Sent: Monday, July 30, 2007 3:23 PM
To: 'david.tuthill@idwr.idaho.gov'
Subject: Denial of irrigation

Director of the Idaho Department of Water Resources
Mr. David Tuthill:

Since Spring, we have been attempting to run our subdivision's irrigation system. The irrigation system serves approximately 7 lots within our subdivision, and a newly approved, plated subdivision of 112 acres that is being developed. The irrigation system consists of a pump/motor on the banks of the Payette River in Gem County. A 1900 ft. underground irrigation main line, that has been in existence for many years, distributes the irrigation to the various lots. All property owners knew of and agreed to the irrigation system and easements, at the time they purchased their property. The system was last run in 2005 and upgraded with a new pump and 10hp electric motor. Since 2005, users were denied access to the pump but we have since gained access as of this Spring.

However, the subdivision's irrigation system is now made inoperable, because a landowner maliciously removed his irrigation valve and the entire subdivision's water supply is being diverted out an open pipe and wasting onto their land. The landowner is using the term "abandonment", as defense in not repairing the mainline that runs thru his property and serves other users. It is apparent that since installing their private irrigation well, they want the irrigation easement removed from their land and are currently denying others water by diverting the water out the end of an open pipe that branches off the irrigation main line. This landowner has the right to irrigate from the subdivision irrigation system, but currently uses a private irrigation well instead, that is contained upon his private land. It is our understanding from the Department of Water Resources, that both using systems (the subdivision irrigation, and his private system) at the same time is prohibited.

We demanded that the landowner restore the subdivision main, line so that others may use water. Our requests were denied. We then offered to make the repairs and were denied. We then called the Gem County Sheriff's department and the responding officer stated that they must repair the mainline and explained that failure to do so was in violation of State Statutes, and a misdemeanor offense. They refused to make repairs and were arrested a couple days later. They immediately bailed out of jail and have since refused to make repairs or let anyone on their property to make repairs.

The local Sheriff's office appears to lack understanding of the law, in order to demand that the property owner allow us to access the property to make repairs. The property owner will not allow anyone on his property and we are of the belief he will feel justified in the use of violence, to keep irrigators out. Our 6 acre property which contains livestock is currently barren, since we are unable to irrigate and we are without a means to protect our residence from range fires.

Our question to you is, can your office get involved, whereby you can appoint an officer from your department to access the property and make repairs? The repair simply consists of capping the PVC "T" where the irrigation valve, that served the property owners lot, was removed. The costs would be paid by those wishing to use the water. If access is again denied by the property owner, to an officer of your department, it seems then that the State Police could then become involved.

Thank you,

7/16/2009

"H"

1 of 2

Sincerely,
Mike and Linda Mihalka

7/16/2009

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State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

July 31, 2007

Mike & Linda Mihalka
Horseshoe Bend ID

RE: E-Mail--Denial of Irrigation 7/30/07

Dear Mr. & Mrs. Mihalka:

Your 07/30/07 E-mail to Director Tuthill of the Department of Water Resources (Department) has been forwarded to me for response. I recall a telephone conversation with you concerning this matter also on 07/05/07. Hopefully, this letter will provide you with information and help clarify questions regarding your situation.

From your e-mail, it is our understanding that a neighbor will not allow access to the subdivision pipeline to make repairs/cap. It is alleged, the neighbor has removed a lateral pipe cap allowing free flow on his property. Unfortunately, your e-mail does not provide information on your water right or legal description to pinpoint the specifics. However, I would like to share the following general information:

-The Idaho Water Statutes are very clear concerning right-of-ways/easements relating to ditches (pipelines) and conveyance works. I would draw your attention to the following Idaho Code, copy attached:

- **(IC) Title 42 Chapter 11 Rights of Way-** Specifically IC §42-1102 addresses ditches and conduits located on other owner's lands, and the right to enter the property for repair and maintenance.
- **Chapter 12, Maintenance and Repair of Ditches** outlines the owners/ controllers responsibility in maintenance and repair of ditches and conveyances.
- **IC§ 42-902 and IC Title 18 Chapter 43 describes Crimes and Punishments** for wrongful actions.

-An easement/right of way is not an element of a water right; each are addressed separately. Matters dealing with easements/right of ways are not under the Department's jurisdiction. Conflicts are generally dealt with as civil matters between parties or in civil court.

"I"

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Page 2.
Mihaika

-The Department has only administrative enforcement authority under the water statutes. Our agency has no enforcement officers to regulate right of ways, or address illegal acts related to water. We are not authorized to access private property or make repairs. Criminal enforcement is only through the Gem County Sheriff.

Unfortunately, our agency is limited in assisting you with this matter other than providing water right documentation or information. Your correspondence indicates the Gem County Sheriff has already made an arrest, and you are awaiting the case. You may also wish to consult an attorney to review options.

We hope that parties can resolve the issues in an expedited fair manner. Should you have any questions, please contact me at the Western Regional Office, phone 334-2190.

Sincerely,


John Westra, Manager
Western Region

Enclosure: Water Statutes

Mike and Linda Mihalka
11720 N. Hwy. 52
Horseshoe Bend, ID. 83629
(208) 584-3707

December 8, 2008

Watermaster Ron Shurtleff
State Water District No. 65
102 North Main Street
Payette, Idaho 83661

RE: Water Right No: 65-2590B, Irrigation

Dear Mr. Shurtleff,

This is a letter of explanation concerning our water usage report for the 2008 water year.

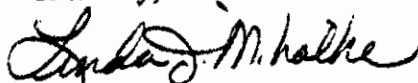
As mentioned in our 2007 water year report, we are in litigation with two of our neighbors who have temporarily denied us use of irrigation water. Our neighbors to the south (Eugene and Joni Shepherd) have removed their irrigation valve, which effectively diverts water from a shared irrigation main line, away from our property. They refuse to replace the valve, or cap the open riser. The other neighbor to the southwest (James "Doc" and Judith Peterson), refuse us access across a legal irrigation easement. As the result of these actions, we have no water usages to report for this year.

Records of our demands to secure uninterrupted access to our irrigation are on file with the Gem County Sheriff's office (the Gem County Sheriff arrested Eugene Shepherd for violation of three Idaho Statutes pertaining to irrigation). We also made numerous contacts with the Idaho Department of Water Resources, eventually corresponding with the Director of Water Resources, David Tuthill and the Western Regional Manager, John Westra. Court documents are on file in Gem County, as to the status of the litigation.

Both the Shepherds and the Petersons abandoned the shared irrigation system and secured private means of irrigation, with the intent to deny access to the remaining users. We are expecting the irrigation dispute to be resolved before the start of next year's irrigation season. At that time, we intend to make full use of our irrigation equipment to grow hay upon our acreage, for public sale and our own use. We intend to file an application with the Department of Water Resources, to have our remaining acreage irrigated as well to grow feed for livestock.

Please, if you have any questions concerning this matter, or need to be updated with any information as it becomes available to us, please contact us.

Sincerely,



Mike and Linda Mihalka

"J"

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Idaho Water District No. 65

Phone: 208-642-4465
Fax: 208-642-1042
E-mail: waterdist65@srvnet.com

102 North Main
Payette Idaho 83661
Water Year 2008

IDWR Ident No. 13248928

MIKE & OR LINDA MIHALKA
11720 N HWY 52
HORSESHOE BEND, ID 83629

Water Right No: **65-2590B**

Listed Water Right Owner(s):
Linda Milhalka & Mike Milhalka

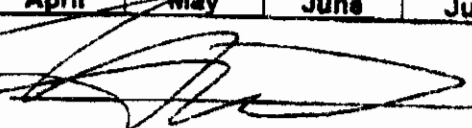
Source: **Payette River**
Type of Use: **Irrigation**
Diversion Rate: **0.08 CFS**
Irrigated Acreage: **4.2**

Point of Diversion: **NESWNE Lt 1 Sec. 25; SWSE Lt 1, Sec. 24; T 07N R 01E**

Place of Use: **07N 01E Sec. 24 Lt 1 SESE**

Payette River, Water Diversion Card-2008

Day of Month	April	May	June	July	August	Sept.	October	Day of Month
1								1
2								2
3								3
4								4
5								5
6								6
7								7
8								8
9								9
10								10
11								11
12								12
13								13
14								14
15								15
16								16
17								17
18								18
19								19
20								20
21								21
22								22
23								23
24								24
25								25
26								26
27								27
28								28
29								29
30								30
31								31
	April	May	June	July	August	Sept.	October	

Signature 

Date 12/8/08

Mike and Linda Mihalka
11720 N. Highway 52
Horseshoe Bend, ID. 83629

(208) 584-3707

November 12, 2007

State Water District No. 65
Ron Shurtleff – Watermaster
102 North Main Street
Payette, Idaho 83661

RE: Water Right No: 65-2590B, Irrigation

Dear Mr. Shurtleff:

Enclosed please find the form you requested of our daily water usage entries and diversion rate for the 2007 irrigation season.

You will also find enclosed, documentation explaining the reason our water usage was at a bare minimum. As outlined in said correspondence, James and Judith Peterson, the property owners where our diversion and pump are located, have denied us access to our irrigation easement.

Eugene and Joni Shepherd, additionally, have refused to repair and/or permit anyone else to repair the breach in the mainline located upon their property.

We have made every effort to access our irrigation and have to date, been unsuccessful in doing so.

If you have any questions, please feel free to contact us.

Sincerely,

Mike Mihalka

"K"

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State Water District No. 65

Phone: 208-642-4465
Fax: 208-642-1042

102 North Main
Payette Idaho 83861
Water Year 2007

No. 10-

13248928

c/o Mike &/or Linda Mihalka
11720 N Hwy 52
Horseshoe Bend, ID 83629

Water Right No: 65-2590B

Water Right Owner:
Linda Mihalka & Mike Mihalka

Source: Payette River
Type of Use: Irrigation
Diversion Rate: 0.08 CFS
Irrigated Acreage: 4.2

Point of Delivery: NESWNE Lt 1 Sec. 25; SWSE Lt 1, Sec. 24; T 07N R 01E

Place of Use: 07N 01E Sec. 24 Lt 1 SESE

*Note: for each
112 GPM entry
Shepherds were
diverting 112 GPM
(GPM based upon
pump output
calculated by Rain-
for-Rent, Tampa)*

Payette River Water Diversion, Reporting Card

Day of Month	April	May	June	July	August	Sept.	October	Day of Month
1				off				1
2								2
3								3
4				112 GPM	112 GPM			4
5								5
6					off			6
7								7
8				off				8
9								9
10								10
11					112 GPM			11
12								12
13					off			13
14				112 GPM				14
15								15
16				off				16
17								17
18					112 GPM			18
19								19
20					off			20
21				112 GPM				21
22								22
23				off				23
24								24
25					112 GPM			25
26								26
27					off			27
28				112 GPM				28
29								29
30			112 GPM	off				30
31								31
	April	May	June	July	August	Sept.	October	

Signature

Date 11/4/2007