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DEPARTMENT OF
WATER RESOURCES

July 20, 2009

Gary Spackman
Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
PO Box 83720
Boise, ID 83720-0098

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

Dear Mr. Spackman;

An application for transfer for KBCP LLC, attached was prepared and submitted to the Eastern Region IDWR offices. A summary of the transfer is as follows:

KBCP LLC desires to transfer water right 35-2172 for 145 acres from irrigation to irrigation. The water right is located within the Eastern Snake River Plane aquifer area and analysis of the transfer has been performed using the ESPA Model. A previous transfer (No. 75147) with similar characteristics was processed and advertized by IDWR. In correspondence concerning transfer No. 75147 David Tuthill indicated that utilization of the combined Near Blackfoot to Minidoka reach for determining Snake River reach depletion should be considered. Combining the Near Blackfoot to Neeley reach and the Neeley to Minidoka reach, the model analyses determined that no mitigation is required for the transfer of 35-2172.

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The Eastern Region office reviewed the application and returned it to Brockway Engineering stating that the application cannot be processed. The basis of rejection has brought some concerns to our attention.

It is Brockway Engineering's understanding of the Idaho Department of Water Resources policies that a water right holder can have a defined permissible place of use (PPU) with a water right that is a smaller in irrigable acreage size than the PPU acreage. The Eastern Region office indicated that it does not process transfer applications based on large permissible places of use. This action appears contrary to IDWR policy. The decision to not process a large PPU because it may require additional effort to regulate water distribution

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should be based on policy and not personal opinion. The current application to create a large PPU would allow the water right holder more flexibility in use of their water rights and property and should be allowed by the Eastern Region office.

Another apparent reason for Eastern Region's refusal to process the KBC application relates to impacts on the Snake River between Near Blackfoot and Minidoka. The purpose of the ESPA Model is to evaluate whether a transfer would result in injury to any other water rights. The standard model analysis as indicated in the ESPA Transfer Guidelines was initially used for this transfer. The criteria utilized was that implementation of the transfer could not impact any Snake River reach-gain by more than 2 acre feet per timestep or more than 10% of the pumped volume. The result was that 75% of the water right would be required for mitigation. This is not acceptable by KBCP LLC. A previous transfer with similar characteristics was submitted in which former Director David Tuthill indicated that the utilization of the combined Near Blackfoot to Minidoka reach for determining Snake River reach depletion should be considered for transfer No. 75147. By doing so, an accurate simulation determines that no injury would occur due to the transfer. Based on the combined reach analysis, the model application showed no mitigation requirement for the KBCP LLC transfer. Therefore, no injury will result from the transfer. The underlying criteria for the transfer guidelines are to assure no injury to other water rights as a result of the proposed transfer. Therefore, it is our opinion that the analysis of the model, as per agreement with former Director Tuthill, should not be limited to a single reach if it can be shown that hydrologic and water right circumstances are such that the effects of a transfer do not result in injury.

The Eastern Region office indicated that an agreement by a former Director while in office, now has no validity. Eastern Region stated that they have no authority to accept this proposed transfer application. I am requesting that you consider this transfer of water right 35-2172 and the conclusion of former Director Tuthill and allow processing of this application

Amendments concerning the existing water rights and points of diversion approved by a previous transfer on the property will be made to the application when the fore mentioned concerns have been addressed.

Transfer of water rights 2-7249 and 2-7462 for Salmon Falls Land and Livestock Inc. was submitted to Monica Van Busman at the State office on June 9, 2009. The purpose of the transfer was to create a PPU for the

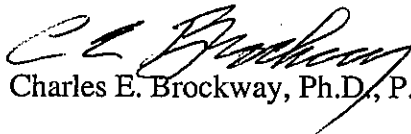
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ranch/dairy complex and to correct the place of use which included some BLM land. We subsequently received an e-mail from Southern Region (Benny, Walker) that indicated that the PPU requested includes "lands that will never be irrigated" and therefore the Department cannot process the application unless a PPU of irrigated lands is submitted. Again, this requirement appears contrary to the purpose of a PPU. It appears that the Department may be requiring a determination, either by the applicant or the Department, of the irrigability of all lands within a PPU and that only those irrigable lands can be included in a PPU. If this is the case, then anytime a water user wants to change the irrigated area within his desired PPU, he will have to submit a transfer with a .shp file that identifies only the land intended to be irrigated.

I would appreciate clarification of the responses from the Regions relative to these apparent transfer requirements.

Sincerely,


Charles E. Brockway, Ph.D., P.E.

Cc: Klaren Koornpin
Mike Henslee

Enc: Dave Carlson Letter 7/13/2009
Benny Walker e-mail July 15, 2009

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State of Idaho

DEPARTMENT OF WATER RESOURCES

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EASTERN REGION

July 13, 2009

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

BROCKWAY ENGINEERING- Greg Sullivan

2016 N WASHINGTON ST STE 4
TWIN FALLS, ID 83301



RE: Application for Transfer KBCP LLC

Dear Applicant(s):

The Department of Water Resources has received your application for transfer. Preliminary review of the application indicates that it cannot be accepted for processing. We are returning your application to allow you to complete the necessary items. The required information is described below.

The Proposed Place of Use. Eastern Region does not process transfer applications based on large permissible places of use. Further we have just completed a transfer on this property/ system. When there are other existing water rights and different points of diversion, those need to be a part of the application.

Your ESPA analysis is not sufficient. Transfer 75147 was not approved, was a one time agreement. It set no policy in place for future transfers. The Director that made that agreement is no longer with IDWR. Eastern Region has no authority to accept transfers based on this one time agreement.

Please feel free to contact this office if you have any questions.

Sincerely,

Dave Carlson
Eastern Region - IDWR

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Zach Latham

From: Walker, Benny [Benny.Walker@idwr.idaho.gov]
Sent: Wednesday, July 15, 2009 3:16 PM
To: Zach Latham
Subject: Salmon Falls Transfer

Zach,

It has been brought to my attention that you need a PPU of Irrigated lands, the current PPU includes lands that will never be irrigated.

Thanks, Benny

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7/16/2009