

Robertson & Slette, p.l.l.c.
ATTORNEYS AT LAWJ. EVAN ROBERTSON
GARY D. SLETTE

Robin L. Moore, PLS - Paralegal

134 Third Avenue East
P.O. BOX 1906
TWIN FALLS, IDAHO 83303-1906
TELEPHONE (208) 933-0700
FAX (208) 933-0701GARY D. SLETTE
gslette@rsidaho.com

May 22, 2009

VIA EMAIL jeff.pepperzak@idwr.idaho.gov
VIA FACSIMILE 208-287-6700Jeff Pepperzak
Idaho Dept. of Water Resources
P.O. Box 83720
Boise, ID 83720-0098**RE: Picabo Land & Livestock**

Dear Jeff:

Following the conversation that you had with Chuck Brockway and me, I proceeded to prepare the enclosed Petition relative to the issue of the limitation at the field headgate. Although my client has approved the Petition as to form, Chuck is out of town and has not yet had a chance to review it. However, I thought it would be prudent to run it past you for a review and your comments.

Please contact me after you have had an opportunity to read through the proposed Petition.

Yours truly,

GARY D. SLETTE

GDS:rlm

Encls.

cc: Nick Purdy
Chuck Brockway, Jr.
rlm:gds:slette@IDWR_pepperzak

SUPPORT DATA

IN FILE # 37-21

Gary D. Slette
ROBERTSON & SLETTE, PLLC
P.O. Box 1906
Twin Falls, Idaho 83303-1906
Telephone: (208) 933-0700
Facsimile: (208) 933-0701
ISB #3198
~~Idaho Department of Water Resources~~

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN RE:)
PICABO LIVESTOCK COMPANY) **PETITION TO CORRECT**
TRANSFER NOS. 5044, 5045 AND 5046.) **CLERICAL ERROR ON**
) **TRANSFERS**
)

COMES NOW PICABO LIVESTOCK COMPANY ("Petitioner"), by and through its undersigned counsel of record, and petitions the Idaho Department of Water Resources (the "Department") for an order correcting clerical errors on Transfer Nos. 5044, 5045 and 5046 (hereinafter collectively referred to as the "Approved Transfers").

Petitioner seeks the Department's action correcting certain clerical errors on the above-numbered Approved Transfers all as more specifically set forth hereinafter.

FACTS

The Approved Transfers were approved, subject to conditions, on March 20, 1998. Pursuant to the Memorandum from Allen Merritt attached hereto as Exhibit "A", and by this reference

1
2 incorporated herein, certain standard conditions were recommended to be placed on the Approved
3 Transfers, which included the following:

4 This right when combined with all other rights shall provide no more
5 than 0.02 cfs per acre nor more than 3.5 afa per acre at the field
6 headgate for irrigation of the land above.

7 Such condition of approval was inconsistent with the rates of diversion per acre listed on the
8 Approved Transfers. As a consequence, Dr. Charles Brockway contacted the Department, and
9 advised Department personnel of the inconsistency. Thereafter, Department Agent Jim Johnson
10 wrote the Memorandum attached hereto as Exhibit "B", and by this reference incorporated herein.
11 Pursuant to that memorandum, the condition was to be removed. The condition was removed from
12 the surface water rights in the Amended Order, but was left on as a condition for the ground water
13 rights. This appears to constitute a clerical error, since leaving the condition on the ground water
14 rights would restrict "all other rights." Mr. Johnson's Memorandum made no distinction between
15 surface water rights or ground water rights. Although the Department recognized that limiting the
16 diversion to 3.5 acre feet per acre was not appropriate, these Approved Transfers still contain a total
17 limit of 9,489.6 acre feet, which is exactly equivalent to 3.5 acre feet per acre.
18

19
20 **RELIEF REQUESTED**

21 Petitioner respectfully requests that the Department correct the Approved Transfers as
22 follows:

23 Transfer No. 5044 – Delete Condition No. 5.

24 Transfer No. 5045 – Delete Condition No. 5.

25 Transfer No. 5046 – Condition No. 7, delete the phrase "nor a total
26 combined annual volume of 9505.2 acre feet.

 Delete Condition No. 8.

1
2 RESPECTFULLY SUBMITTED this ____ day of May, 2009.

3 ROBERTSON & SLETTE, PLLC

4
5
6 By: _____
GARY D. SLETTE

7
8 CERTIFICATE OF MAILING

9 I hereby certify that on this ____ day of May, 2009, I served a copy of the foregoing
10 instrument, by depositing same in the United States mail, postage prepaid, in an envelope,
11 addressed to the following:

12 Director [] Hand Deliver
13 Idaho Dept of Water Resources [✓] U.S. Mail
P.O. BOX 83720 [] Overnight Courier
14 Boise, ID 83720-0098 [] Facsimile Transmission - 208-287-6700

15 Jeff Peppersack [] Hand Deliver
16 Idaho Dept of Water Resources [✓] U.S. Mail
P.O. BOX 83720 [] Overnight Courier
17 Boise, ID 83720-0098 [] Facsimile Transmission - 208-287-6700

18 Allen Merritt [] Hand Deliver
19 Idaho Dept of Water Resources [] U.S. Mail
1341 Fillmore St. - Ste. 200 [] Overnight Courier
20 Twin Falls, ID 83301 [] Facsimile Transmission - 736-3037
[✓] Email Allen.Merritt@idwr.idaho.gov

21 Charles G. Brockway PE [] Hand Deliver
22 Brockway Engineering [] U.S. Mail
2016 N Washington St - Ste 4 [] Overnight Courier
23 Twin Falls, ID 83301 [] Facsimile Transmission - 736-8506
[✓] Email charles.g.Brockway@brockwayeng.com

24
25
26 _____
Gary D. Slette

FROM: Allan Merritt *AM* DATE: September 25, 1997
TO: Transfer File Nos.: 5044, 5045 & 5046
In the Name of: Picabo Livestock Co.
SUBJECT: Review and Recommendation

These three transfers deal with creation of a PPU on the main block of Picabo Livestock Co. lands (Picabo PPU) in the vicinity of Picabo Idaho. One transfer also serves to split a groundwater right and move a portion up the valley to provide groundwater for lands (Greenhorn) presently irrigated by groundwater via an SRBA enlargement claim A37-14258. (The Greenhorn lands are also served by surface decrees from the Big Wood River.) No new wells or points of diversion will be developed pursuant to these transfers (all presently exist). These three transfers should be reviewed together. Note that a large map exists in file 5044 showing the delivery system for the Picabo PPU. There is also a map in 5046 comparing recorded acres of the rights. As seen the Picabo lands have numerous rights associated with irrigation. These rights are relatively vague in describing the extent of use. The transfers purport to remove this vagueness as well as reduce the historical place of use by 52.7 acres to allow moving a portion of one groundwater right up the valley to the Greenhorn lands. Since the groundwater is in some respects supplemental at both sites, it may not be necessary in one respect to dry up acres; but on the otherhand, there is potential to expand use from the wells on the Picabo PPU. Maybe the reduction of acres mitigates this expansion potential.

Transfer 5046 deals mainly with creating the 2711.3 acre Picabo PPU for the 33 surface water rights. This transfer was processed without protest. The surface rights will be diverted into four diversions (1 from Loving Creek & 3 from Silver Creek)

Transfer 5044 deals with including two groundwater rights in the Picabo PPU. This transfer was processed without protest. The groundwater rights are diverted from 3 existing wells which augment surface diversions.

Transfer 5045 deals with another groundwater right but a portion is proposed to be moved to the Greenhorn lands to be diverted from an existing well and the remainder stays within the Picabo PPU to be diverted from the same three existing wells mentioned in transfer 5044. This transfer was protested by parties concerned in the Greenhorn area but the protest was resolved by agreement among parties. The agreement should be made part of any approval.

REVIEW

Forfeiture does not appear to be an issue. Expansion does not appear to be an issue. The points of diversion on Silver Creek are

EXHIBIT A

all within the reach covered by minimum flow right 37-07727; I do not think this transfer is affected by this right but may need to have legal review and special conditions prepared. My analysis of Brockway's figures for what amount of water has historically been delivered does not arrive at Brockway's amount but in either analysis it does not appear to bear on final approval.

On final review I have found a typo in the description of the well on the Greenhorn property. It should be SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 18, Twp.03N, Rge.18E, S.M. I believe we should not require re-advertising of this minor change since it was protested and in resolution the agreement specifies no new wells to be drilled. Adequate notice has been given.

RECOMMENDATION

I recommend that these transfers be approved subject to the following conditions: R04, R43, T02, T07, T08, T09, 065, No new wells or diversion headgates authorized to be developed under approvals.

Additionally for 5045: 020, Correct typo, No New wells authorized to be developed under approval. No newly irrigated acres are allowed to be developed as a result of this transfer. Rights 37-02632 and 37-08854 are diverted from the same well in SW $\frac{1}{4}$ NE $\frac{1}{4}$, Section 18, Twp.03N, Rge.18E, S.M.

MEMORANDUM

Date: April 21, 1998

To: Files

From: Jim Johnson

Subject: Request to Amend Approved Transfer 5046

On March 20, 1998 the Department approved the above referenced transfer containing the following condition.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 3.5 afa per acre at the field headgate for irrigation of the lands above.

On April 6, 1998 Chuck Brockway, representing the transfer applicant contacted me concerning the condition, pointing out that it was inconsistent with the rates of diversion per acre listed on the transfer.

I have reviewed the matter and after discussing various alternatives with my supervisor we have elected to remove the condition.

An amended transfer approval has been prepared and an amended preliminary order will be issued.

EXHIBIT B