



State of Idaho

DEPARTMENT OF WATER RESOURCES

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EASTERN REGION

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

June 11, 2009

Hunsaker Ranching Inc
PO Box 324
Soda Springs ID 83276

RE: Transfer 73162, 27-45

Dear Keith:

In October 2006, I assisted you with completing an application for transfer no. 73162 on decreed water right 27-45. The purpose of the application was to shift the season of use, from April 15 to July 1, to June 1 to August 31. If I recall correctly, you indicated representatives of the Shoshone Bannock Tribe at least initially were accepting of your proposal. However, no documentation was provided to corroborate this position. In April 2009 I contacted Elise Teton, Tribal Water Engineer, enquiring about the Tribe's position concerning the application. She was in general agreement with my proposal for approving your application, however, we decided to also send a letter to Jeanette Wolfley, attorney for the Shoshone Bannock Tribe, offering an opportunity to provide a written response on the Tribe's position concerning this application. Though a response was not received I have prepared an approval of the application based on the following analysis.

On the application, you stated in making this change you would limit irrigation to 18 days in both June and July and then only 10 day in August with a seasonal volume total of 372 acre feet. At first glance, this idea appeared to be creditable partly because it should resolve the Tribes objection about putting a diversion volume on the irrigation right. However, in subsequent discussions with Department staff it became obvious there was a real potential for this change, if approved as proposed, to cause injury to junior priority rights diverting from the Blackfoot River that always had a season of use later than July 1. One approach to prevent injury in this situation is to change the priority date for the water right to the date when the application for transfer was filed. For your application this date is October 2006. However, I propose changing the priority date for delivery after July 1, to June 28, 1983. This is one day later than the most junior irrigation right on the Blackfoot River or a tributary and maintains the standing of your water right with regard to the subordination provision identified in tribal water right 27-11375, paragraph .x .d which states in part:

...persons diverting natural flow from the Blackfoot River prior to January 1, 1990, whose rights are decreed in the SRBA will continue to receive the full legal entitlement under state law.

I have discussed this idea with James Cefalo who has spent two years becoming familiar with the delivery of water rights on the Blackfoot River, both past and present. It is his opinion in normal years such a reduction in priority would not be detrimental because there is sufficient water in the river to satisfy all rights.

Also, because the recommended season of use for the water right of April 15 to July 1 consists of 76 days, to guard against enlargement in use of the water right the shifted season of use needs to be limited to the same number of days. Therefore, the approved season of use will go from June 1 to August 15, rather than August 31.

Naturally if you have questions concerning the above items feel free to contact me but also please carefully read the documents accompanying the transfer so you are aware of the necessary steps you must take if you disagree with approval.

Respectfully,

A handwritten signature in cursive script, appearing to read "Ernest Carlsen".

Ernest Carlsen

Water Resource Program Manager

Enclosures (2)

cc: Elese Teton
James Cefalo