



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

May 22, 2008

Frank & Phyllis Bedke
PO Box 83
Oakely, ID 83346

Dear Mr. and Mrs. Bedke:

Our Department has conducted a preliminary review of a water right transfer application in the name of Frank and Phyllis Bedke that was submitted to our office by Brockway Engineering. The application was submitted in April of 2007 and proposes transferring a portion of a supplemental groundwater irrigation right, 45-4217, to primary use at a feedlot operation in the Oakley area. The application also proposes modifying the existing right, 45-2448B, that is currently associated with the feedlot operation. Review of the application revealed several items of concern that need to be addressed before processing of the application can continue.

The primary concern relates to the historical analysis of the use of the supplemental groundwater irrigation right, 45-4217, and the corresponding amounts available to be transferred to the feedlot and the amounts that would remain for irrigation use at the current farm. The application includes an analysis based on power records from years 2000 – 2006, with the year 2000 not being included in the analysis due to participation in the IPCO power buyout program. The cover letter included with the application references a "5-year average diversion volume of 615.7 ac-ft", presumably an attempt to satisfy the direction given in the Department's transfer memo with regard to analyzing historical use of a supplemental right (*"an appropriately representative time period that may be greater than five years, will be the basis for the volume available for transfer."*). However, it appears that the 615.7 ac-ft average was calculated by disregarding year 2001 (IPCO buyout year) and averaging the remaining four years in the time period of 2000-2004. These four years happen to be the four highest years of the seven year time period of power record data that was included with the application (2000-2006). I have had the opportunity to discuss this particular matter with personnel in our state office and they indicated that they would be willing to accept an analysis that does not include year 2001 (IPCO buyout year), but that the average would need to include the remaining years in the power data that was included with the application (include years 2005 and 2006 in the average). This would result in a lower estimated average diversion volume calculation as can be seen in the table on the next page.

The Department has also had the opportunity to review Water District 140 well inventory records and discovered that a power consumptive coefficient (PCC) has been calculated, based on field measurements in August of 2007, for the well that serves as the point of diversion for supplemental groundwater irrigation right, 45-4217. The PCC for this particular well has been calculated at 1369.89 kWh/ac-ft (kilowatt-hours per acre foot). Using this PCC value, based on actual field measurements, and the power records that were supplied with the application should yield a more accurate average diversion volume estimate. The following table shows a comparison of average diversion volume estimates...

Year	Energy Use (kWh)	Estimated Annual Diversion Volume Based on Analysis included with Application	Estimated Annual Diversion Volume Based on PCC value (1369.89 kWh/ac-ft)
2000	485,280	680.7 ac-ft	354.2 ac-ft
2001	Power Buyout	0.0	0.0
2002	384,020	534.4 ac-ft	280.3 ac-ft
2003	525,540	728.4 ac-ft	383.6 ac-ft
2004	376,360	519.6 ac-ft	274.7 ac-ft
2005	298,760	410.8 ac-ft	218.1 ac-ft
2006	289,240	396.2 ac-ft	211.1 ac-ft
		• Four year average of 2000 - 2004 (excluding year 2001) is 615.7 ac-ft • Six year average of 2000 - 2006 (excluding year 2001) is 545.0 ac-ft	• Six year average of 2000 - 2006 (excluding year 2001) is 287.0 ac-ft

The table above shows that the average annual diversion volume that was the basis for the application may have been overestimated. In order to provide the 121.2 acre-feet per year that is apparently needed for the feedlot expansion it appears that additional acres will need to be dried up in the application. The currently proposed number of acres to be dried up in the application (47.2) will provide significantly less volume than the 121.2 acre-feet per year for the feedlot expansion.

The analysis included with the application indicates that 26.2% of right 45-4217 would need to be transferred, which would leave 73.8 % of the right for irrigation use at the current farm. It appears that a disproportionate rate is proposed to be transferred to the feedlot, which is allowable as long as the transferred rate will provide the transferred volume and the remaining irrigation rate does not exceed 0.02 cfs per acre. However, it appears that more than 73.8% of the volume and allowable acres (691.4 afa and 172.8 acres) are identified as remaining for irrigation use at the current farm. Note that 73.8 % of the irrigation right would correspond to approximately 649.4 afa and 162.4 acres.

Using the six year average diversion volume estimate based on the PPC value (287.0 afa) for the basis for calculating the amount of right 45-4217 needed to be transferred to provide the 121.2 acre-feet per year (afa) for the feedlot expansion results in approximately 56.4 % of right 45-4217 needing to be transferred. If an application efficiency of 75 % is assumed, an annual consumptive diversion volume of 215.25 afa (0.75×287.0 afa) can be obtained. Using an irrigation requirement value of 2.57 afa per acre based on alfalfa in the Oakley area results in approximately 83.8 primary groundwater acres ($215.25 \text{ afa} \div 2.57 \text{ afa per acre}$). The desired 121.2 afa would require the conversion of 47.2 acres of irrigated alfalfa acres ($121.2 \text{ afa} \div 2.57 \text{ afa per acre}$). The needed 47.2 acres is approximately 56.4 % of the 83.8 primary groundwater acres ($47.2 \text{ acres} \div 83.8 \text{ acres}$). Assuming no disproportionate transfer of diversion rate, this would result in 1.69 cfs and 121.2 afa of right 45-4217 being available to be transferred to the feedlot and 1.31 cfs and 383.7 afa remaining for the irrigation of 95.9 acres at the current farm. Note that because only 95.9 acres would remain on the current farm, if a disproportionate rate were to be transferred the maximum amount of diversion rate of right 45-4217 that could be left on the current farm would be 1.92 cfs (up to 0.02 cfs per acre).

It should also be noted that the conversion of the supplemental groundwater right to primary use will require a corresponding reduction in the overlapping surface rights on the current farm. Since 83.8 primary acres would be removed from irrigation right 45-4217, then 83.8 acres would be removed from the overlapping Big Cottonwood Creek rights, 45-425A, 45-443B, and 45-10594. Since rights 45-425A and 45-443B are currently limited to the irrigation of a combined 160 acres, this would result in rights 45-425A and 45-443B when combined being able to irrigate 118.1 acres. Right 45-10594 is currently limited to the irrigation of 160 acres, so after the transfer it would be able to irrigate an additional 118.1 acres. When combined the Big Cottonwood Creek rights, 45-425A, 45-443B, and 45-10594, would be able to irrigate a combined total of 236.2 acres. The same 83.8 acres being dried up in the transfer of right 45-4217 would no longer be authorized to be irrigated with the Big Cottonwood Creek rights. There would be no corresponding reduction in allowable diversion rate for the Big Cottonwood Creek rights due to the removal of the 83.8 acres because the combined diversion rate would not exceed 0.02 cfs per acre with the reduction in allowable irrigated acres. The Department may also impose some sort of condition relating to the use of Oakley Canal Company water shares on the farm.

Another item of concern relating to the transfer relates to the ownership of the proposed feedlot and the associated water right(s). Deeds included with the application indicate that part of the proposed feedlot (North $\frac{1}{2}$ of the NE $\frac{1}{4}$ and the NENW of Section 31) is owned by Bedke Feedlot, LLC and that the other part of the proposed feedlot (Lot 4 Section 30 and Lots 1, 2, and 3 north of the Oakley Canal Company right of way in Section 31) is owned by Frank & Phyllis Bedke. The application is in the name of Frank & Phyllis Bedke, however there is no authorization from Bedke Feedlot, LLC or direction provided indicating how the ownership of the rights involved with the transfer are to be recorded. Right 45-4217 is currently in the name of Frank & Phyllis Bedke, but it is being proposed to be moved to at least some land owned by Bedke Feedlot, LLC. Right 45-2448B currently lists Frank & Phyllis Bedke as the current owners of the right, but a quitclaim deed included with the application indicates that the place of use of the right was conveyed from Bedke Family Trust to Bedke Feedlot, LLC in June of 2006. It appears that right 45-2448B is actually owned by Bedke Feedlot, LLC rather than the applicants (Frank & Phyllis Bedke). Additional information needs to be provided that shows the applicants authority to file the application, modify the rights, and move them to land(s) not owned by the water right owner(s).

Page 4
Bedke Transfer Letter
May 22, 2008

The application (item 6b, Part 1) indicates that the lands from which the applicant proposes to transfer the water rights are not subject to any liens, deeds of trust, mortgages, or contracts. However, both the rights (45-4217 and 45-2448B) involved with the application list Grant Baker Service Corporation as having a security interest in the rights. Department records indicate that Grant Baker Service Corporation filed notice(s) of security interest in these rights in November of 2006 apparently based on a real estate mortgage related to the properties involved with the transfer application. If these lands are indeed involved with a mortgage, then a notarized letter from the mortgage holder agreeing to the changes proposed by the transfer must be included with the application. This item needs to be clarified and possibly addressed. Note that a copy of this letter is being forwarded to Grant Baker Service Corporation for their information as a listed Security Interest for the rights proposed to be transferred.

The Department will hold further processing of your application for 30 days to allow for the items outlined in this letter to be addressed. After that time, if the items are not addressed, the Department will issue a preliminary order to reject the application.

If you have any questions, or if I can be of any further assistance, feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Skinner". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Corey Skinner, PE
Water Resource Engineer

cc: Brockway Engineering
Grant Baker Service Corporation