



State of Idaho

**DEPARTMENT OF WATER RESOURCES**

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March 18, 2008

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

ERO Resources Inc.  
ATTN: Steven R. Hannula  
3314 Grace St.  
Boise, ID 83703-5836

**COPY**

***RE: THREE APPLICATIONS FOR TRANSFER IN ISLAND WOODS  
SUBDIVISION #4***

Dear Mr. Hannula:

I have been asked to review 3 transfers that you prepared for different owners of property in Island Woods Subdivision number 4. These transfers are transfer number 73763 in the name of Jeff and Carrie Benton (Benton), 73762 in the name of Robert and Susan Beede (Beede), and 73808 in the name of Denny and Holly Howell (Howell). Processing of these transfers must be delayed until several issues are clarified. Whereas the information required on all three of these transfers is the same, I am going to address them as a group instead of individually.

According to the transfer applications, the applicants wish to change the ownership of their portion of the water right, and re-adjust the acres for their perspective lots in the subdivision to cover the irrigation that was not previously covered by water rights 63-32593 (formerly 63-196) and 63-32595 (formerly 63-197). There are several concerns that result in these proposals.

The initial concern with these proposals is the amount of acres being transferred. According to the Idaho Department of Water Resources (Department) records, Benton owns 0.4 acres, Beede owns 0.4 acres, and Howell owns 0.3 acres of ground within the borders of water rights 63-32593 and 63-32595. Page 3 of Administrator's Memorandum for Transfer Processing number 24 states the following:

A proposed change to any water right held for irrigation involving a change in the number of irrigation acre of less than one acre at the original place of use or at a proposed new place of use in not approvable unless the proposed change involves a new purpose of use within the original place of use or the applicant provides a verification procedure approved by the director that can be practically administered to prevent injury or enlargement..

In essence this portion of the memorandum states that we cannot approve this transfer unless your clients can provide information showing how their proportionate share of the water right will be delivered. We will need to know how the water will be delivered. If another entity is delivering the water, there should be some type of agreement or memorandum of understanding between the applicant's and the entity delivering the water. Please supply the documentation showing that the applicant's arrangements for delivery of water.

Another issue that raises concerns is the way the diversion rates will need to be applied to such small properties. The applicants will need to contact BW Inc. to address the diversion rates that will need to be assigned to these transfers. The minimum diversion rate the Department can issue on a water right is 0.01 cfs. Unfortunately, this means that each of the three water users will be assigned a diversion rate of 0.01 cfs, and BW Inc.'s water rights will be reduced by 0.03 cfs. Currently, Benton is limited to a diversion rate on their property of 0.0023 cfs from water right 63-32593 and 0.0057 cfs from water right 63-32595 for a total when these rights are combined of 0.008 cfs. However, once the transfer is complete Benton will have 0.01 cfs from 63-32593 and 0.01 cfs from 63-32595 for a total of 0.01 cfs. Beede's portion of the water rights and the end results after the transfer are the same diversion rates as Benton. Howell is limited to a diversion rate on their property of 0.0017 cfs from water right 63-32593 and 0.0043 cfs from water right 63-32595 for a total when these rights are combined of 0.006 cfs. However, once the transfer is complete Howell will have 0.01 cfs from 63-32593 and 0.01 cfs from 63-32595 for a total of 0.01 cfs. These increased diversion rates will be an enlargement of the water right unless BW Inc. agrees to reduce the amount of water they divert under their water rights to allow the irrigation on these three lots. Any agreement between these parties would need to be at the very least notarized and preferably recorded with the county.

The final issue that comes into play is whether or not the applicants actually own a piece of water rights 63-32593 and 63-32595. The current place of use in the Department's mapping records shows a place of use of 85.7 acres, and the water rights only allow 74 acres of irrigation. This enlarged place of use was the result of mapping during an ownership split of the original water rights. These water rights have never been designated as a permissible place of use, so the exact 74 acres historically irrigated under these water rights have not been specifically described. Therefore, the Department will need a map from BW Inc. showing the actual location of the 74 acres irrigated under these water rights prior to proceeding with these transfers. If those 74 acres fall on the lands being retired through the proposed transfer applications, then we can proceed with processing.

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Island Woods Water Users

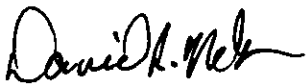
I have discussed this situation with several of the Department's staff, and one possible solution to this situation would be for BW Inc. to file the transfer to re-arrange the borders of their water rights to include the acres being sought through these transfers. BW Inc. could use a permissible place of use to describe the expansion of their borders. It appears as though BW Inc. retained all the water rights for all the private lots in this subdivision except for the three lot owners who filed these transfers. The three applicants would then only need to send us a notarized letter stating that they do not oppose the new transfer application. The water right would remain in BW Inc.'s name for the time being, but the water could be distributed more equitably amongst all of the water users on this irrigation system. We could also apply the fees from these three transfers to the new application if they so desired. Using this method would allow the subdivision to operate as a whole instead of a whole with three individuals.

There could be several other ways to address these transfers, and the Department is willing to go over any proposals that you can supply. We want to put together a transfer package that will work well for everyone involved.

Please submit the requested information to allow final evaluation of your application to be completed. You may seek additional time to provide the information by making a written request to delay or interrupt processing. Your written response including the requested information, or a request for more time to seek the information, must be received by April 21, 2008. The Department will issue a preliminary order to reject or deny the application without a timely reply.

If you have any questions or concerns please contact me at 287-4918 or at the above address.

Respectfully,



Daniel A. Nelson  
Staff Hydrologist  
Water Distribution Bureau  
Idaho Department of Water Resources

Cc     Robert and Susan Beeded  
         Jeff and Carrie Benton  
         Denny and Holly Howell