



State of Idaho

DEPARTMENT OF WATER RESOURCES

Western Region, 2735 Airport Way • Boise, Idaho 83705-5082

Phone: (208) 334-2190 • Fax: (208) 334-2348 • Web Site: www.idwr.idaho.gov

January 4, 2008

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

HOFSTETTER LAW OFFICE
ATTN DANA L HOFSTETTER
608 WEST FRANKLIN STREET
BOISE ID 83702

COPY

RE: APPLICATION FOR TRANSFER 73952

Dear Ms. Hofstetter:

This letter concerns the processing of the Greg Obendorf transfer, number 73952, on water rights 51-2174 and 51-7104. In the review of this transfer, I noticed that application requested the full diversion volume granted by the irrigation rights. Typically, the department limits the change of nature of use of irrigation rights to the volume of the historic consumptive use of those water rights.

Your consultant, Norm Young of ERO Resources, spoke to this in the application narrative under Section 2, pages 4 through 7. On page 5, Section 2c, Mr. Young provides information that shows the historic consumptive use would be 247.7 afa, and the water being consumptively used by the proposed change would be 146.9 afa. I agree with the historic consumptive use numbers that Mr. Young has presented in this portion of the narrative. Taking this information into account, it would appear as though the diversion volume of 326.8 shouldn't have been included on the front page of the application, instead, he should have used the 247.7 afa volume.

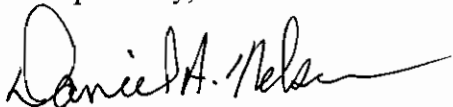
In Section 2e, page 6 of Mr. Young's narrative, he references Administrative Memorandum, Transfer Processing No. 24, page 23, dated October 30, 2002. It appears as though Mr. Young believes this portion of the memo allows the full diversion volume to be carried forward to the new use. Although this was a very unusual request, Mr. Young presented a reasonable argument that I felt would be best addressed at the State Office level.

Therefore, I contacted our State Office staff concerning Mr. Young's interpretation of this issue. Although this situation is very unusual, our State Office staff agreed that Mr. Young's analysis did have some merit. The difference in this case compared to similar transfers is that there is long delivery system from the diversion point to the place of use, and the consumptive use for the irrigation use is very similar to the new storage and wildlife uses proposed in an acre for acre comparison. It has been determined that if the pond surface area was limited to the number of acres being retired (78 acres), then it would be reasonable to retain the full diversion volume on the face of the water right instead of the historic consumptive use volume typically allowed on change of nature of use transfers. However, if the pond surface area remains at 80 acres, then actual consumptive use would in fact increase.

The above analysis leaves your client with two options. The first option is that your client can leave the diversion volume on the face of the water right with a condition that will limit the total surface area of the ponds to 78 acres. The second option is that you client retain the 80 acre surface area, and reduce the volume on the face of the right to the historic consumptive use. **In order to proceed with the transfer we will need written notification within 14 days of this letter informing us of which direction you wish to proceed.**

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

Respectfully,

A handwritten signature in black ink, appearing to read "Daniel A. Nelson", with a long, sweeping horizontal stroke extending to the right.

Daniel A. Nelson
Staff Hydrologist
Idaho Department of Water Resources

Cc Norm Young, ERO Resources