



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 31, 2005

GREG OBENDORF
C/O DANA HOFSTETTER
HOFSTETTER LAW OFFICE LLC
608 W FRANKLIN ST
BOISE ID 83702

COPY

***RE: APPLICATION FOR TRANSFER FOR GREG OBENDORF ON
WATER RIGHTS 51-2174 AND 51-7104***

Dear Ms. Hofstetter:

On 8/15/2005, our office received the application for transfer for your client Greg Obendorf on water rights 51-2174 and 51-7104. Processing of this transfer must be delayed until the following items are either corrected or clarified:

- 1.) Our records show that John A. Mather currently owns the water rights involved in the transfer. However, the transfer is in the name of Greg Obendorf. You will need to provide documentation showing that Mr. Obendorf currently owns the property involved in the transfer or change the name of the applicant needs to be changed to Mr. Mather.
- 2.) Mr. Mather's lien holder approval letter states that he will consent to the transfer provided that a condition is included in any transfer approval allowing the reversion from wildlife use back to irrigation up to 12/13/2009. I have contacted our administrative staff concerning this request. The department cannot impose that condition. Approval of the current transfer application would result in a new beneficial use of water. Subsequent changes to that new use would have to be evaluated independent of the original use of the water right in question. The best that the department can do is to allow a 5-year development period, which would meet the time frame in his letter. The department would be required to perform a field exam at the end of that 5-year period. This would allow your client to delay development until Mr. Mather's deadline has passed. If Mr. Mather regains control of the property and tries to convert the water right back to irrigation, our office will only be able to guarantee direct conversion back to irrigation for that portion of the wildlife use that was not developed. Any portion of the wildlife use will need to be re-evaluated if another transfer is filed. Therefore, in order to continue with the application, we will need a second response from Mr. Mather retracting his condition of consent.

- 3.) In section B 5 of the transfer you show wildlife use and 78 acres of irrigation. However, according to your narrative and part two of the transfer, the 78 acres shown will be retired. If this is the case, then the 78 acres should not be listed on the front page of the application. You also neglected to include the acres you plan to continue irrigating. Do you wish to split the water rights? If you do plan to split the rights, then you will need to mark other in section A1 and write in Split rights. If you do not plan to split the rights, then you should add in the remaining acres to be irrigated onto the front page of the transfer application in section B 5. The front page of a transfer should mirror what you want your water right to look like if the transfer is approved.
- 4.) The maps supplied with the application do not match the legal description given on the front page of the transfer application. You also neglected to mark the location of the ponds that will be used for Wildlife Storage. Please clearly mark on the map the location of the ponds and any remaining irrigated lands. The maps should be accurate enough to determine the number of acres in each forty-acre tract associated with a pond and/or the number of acres irrigated.
- 5.) You mention that there will be approximately 80 acres of surface area for the ponds being considered, and that each of these ponds will be approximately 1 ½ to 2 feet in depth. These numbers suggest a storage volume of 160 af is needed on the application. We will need a diagram that shows the basic pond size in order to properly verify the amount of storage needed. You also state that the amount of irrigated land is 400 acres, but there are only 397 acres allowed by existing water rights. We need to have an accurate accounting of the acres irrigated and the ponds being created.

- 6.) You mention in your narrative that the evaporation of the water in the ponds will be 138-af during June through September and 110-af October through May for a total yearly evaporation of 248 af. Your calculations refer to the NOAA technical report Annual FWS Evaporation map. This map shows the evaporation of standard temperature water from a pond for an entire year. Using the map, I used 40 inches of water per acre of evaporation, which would show a yearly evaporation rate of 260 acre-feet ($[40'' / 12] \times 78 \text{ acres} = 260 \text{ acre feet}$). The calculations used to determine these amounts are based on a standard water temperature. However, the water that you are planning to use for this use is low temperature geothermal water with a temperature of 106 degrees. It does not appear that your client will be able to maintain the pond levels using the standard calculations for evaporation, and if the geothermal water use was factored in, the volume of water evaporated could be much higher. You may want to contact someone who can assist in the calculations for evaporation of ponds using low temperature geothermal water. The Geo-Heat Center at the Oregon Institute of Technology, 3201 Campus Dr., Klamath Falls, OR 97601 seems to be the current authority on geothermal water use. They may be able to assist you in finding someone to perform the needed calculations to ensure that the evaporation for these ponds is accurate. Whether or not you decide to factor in the possible increased evaporation of geothermal water, we will still need you to show us how you attained the evaporation volume of the proposed ponds. Please supply the formulas and calculations that were used to calculate the evaporation of the ponds, to allow our office ability to review these calculations to determine if they are reasonable.

7.) The wildlife storage volume and evaporation volume shown on the application is 326.8 afa. With the storage requirement of 160-afa and evaporation requirement of 248 afa, The narrative suggests that 408 afa is needed to fill and maintain the ponds. If we used the standard yearly evaporation calculated above, the total volume of water required for the ponds would be 420 afa, and if the geothermal evaporation was factored in the amount could be even higher still. Either way the volume amount listed on the transfer is not sufficient to cover the storage required. The calculations made using the Allen Brockway report also seem to have not been calculated correctly. In your narrative you state the land has historically been irrigated grassland. The Allen Brockway report's nearest comparable crop for grasslands would be pasture. Using the average irrigation requirement for pasture using the Grandview data site, I calculated that the historic consumptive use for the 78 acres being retired is 247.5 afa (see attached sheet). The total diversion volume allowed for the 78 acres is 4.0 afa per acre per IDWR standards or 312 afa. None of these amounts equal the 326.8 afa listed on the transfer application, and the historic consumptive use falls short of supplying the required amount needed for the wildlife storage. The geothermal water may increase the consumptive use for the irrigation component, and we would gladly look at any calculations and formulas you used to attain the historic consumptive use of the irrigation being retired. IDWR can only consider the historic consumptive use of a water right when changing the nature of use. Therefore, you will either need to reduce the size of the ponds or increase the number of acres being retired. Please note that with the use of geothermal water the need to compensate for additional water to account the increased evaporation during colder weather should also be taken into account.

The Department will hold further processing of your application for 30 days to allow submittal of the required information. Additional time may be granted by the Department upon receipt of a written request and sufficient justification for an extension. After that time, if adequate information is not received, the Department will issue a preliminary order to reject or deny the application.

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", followed by a horizontal line extending to the right.

Daniel A. Nelson
Sr. Water Right Agent

Enclosure