



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

PHONE: (208) 334-2190 FAX: (208) 334-2348 www.idwr.idaho.gov

C.L. "BUTCH" OTTER, Governor
DAVID R. TUTHILL, JR., Director

September 4, 2007

BILL & SHIRLEANE ABBOTT
PO BOX 8386
BOISE ID 83707

Re: Heating Your Home in Garden Valley from a Hot Spring

Dear Mr. And Mrs. Abbott:

Recently you filed an ownership change for a portion of water right no. 65-4002X currently in the name of Warm Springs Greenhouse (Ward). Your proposed portion is for 0.014 cfs to heat a home on your property in Lot 28 of Warm Springs Estates No. 1.

The ownership change includes a purchase agreement discussing another step in this process. That other step is for you to seek water right approval from the Idaho Department of Water Resources (IDWR). That approval is needed under Idaho law before you can divert water and heat your home.

IDWR is reluctant to process the ownership change without the necessary water right application in which you would seek that approval. Please recall the extensive conversations you have had with at least one or two IDWR staff members in this office about your situation. I remember meeting with Shirleane last October and sending you extensive notes about water rights needed to heat your home.

One way to seek water right approval is to file an Application for Transfer to change a portion of right no. 65-4002X (method referenced in purchase agreement). The ownership change process can be included as part of the transfer process. In order for a transfer application to be approved, the applicant must demonstrate a like amount of reduced beneficial use at the existing place of use described by the water right. That means Ward must cease heating a home on the Ward property in order for that use to start on your property. Without credible information showing a reduction in current use, a transfer application would have to be rejected or denied to prevent an expansion of use. Section 42-222, *Idaho Code* does not allow an expansion of use to be approved in the transfer process.

The other method to seek water right approval is to file an Application for Permit for a new water right. This approach does not require the ownership change information. This method was the focus of the notes I sent you last fall (additional copy enclosed). A new water right could be considered if you show that the new use will be non-consumptive. A non-consumptive use can include diverting the water to heat your home and then routing the water to a nearby stream to protect senior downstream water rights. The return flow to a stream might also involve a stream channel alteration application filed with IDWR and the US Army Corps of Engineers ("Joint 404 Application"). We can discuss the "404 issue" at your convenience. It would be very difficult to obtain a new water right unless you propose a non-consumptive use.

Bill & Shirleane Abbott
September 4, 2007
Page 2

Therefore, IDWR is returning your Notice of Change in Water Right Ownership for a portion of water right no. 65-4002X. A refund is not being processed as explained below. You may seek the necessary water right approval under one of the following methods:

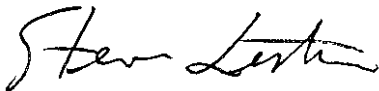
- 1. File an Application for Transfer to split and change a portion of right no. 65-4002X. Provide documentation that a like amount of current use under the right will be retired. Include the ownership change information to show how Warm Springs Greenhouse, the current owner of the right, either approves the proposed change or has legally conveyed a portion of the right to you. The latter step is usually documented by a valid warranty deed. The filing fee is \$100.**
- 2. File an Application for Permit seeking a new right. Ownership change information is not applicable. Demonstrate that a non-consumptive use is proposed. Provide the additional information discussed in the October 6, 2006 notes. The filing fee is \$100.**

Under either filing that you make, please request the \$100 already paid in submitting the ownership change be applied to your water right filing instead. IDWR issued Receipt No. W035782 on August 28, 2007 for that payment.

If you elect not to pursue any water right approval for some reason, you may make a written request for a \$100 refund. In that event, please be advised that it would be illegal to divert and use any surface water for your property.

I have also enclosed information to help you file either of the above applications. IDWR forms and other information are available on the Internet at www.idwr.idaho.gov. Please contact me at 334-2190 if you need more information or if you would like to make an appointment to discuss this in person

Sincerely,



Steve Lester
Water Rights Supervisor

Enclosure: IDWR Notes for Abbott dated October 6, 2006
Original Notice of Change in Water Right Ownership, 65-4002X
Transfer Application Information and Permit Application Information

Copy: Warm Springs Greenhouse C/O Ward (without enclosure)