



State of Idaho

DEPARTMENT OF WATER RESOURCES

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June 11, 2007

C.L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Interim Director

DANA L HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN ST
BOISE ID 83702

RE: Transfer 71619 and Water Rights 63-3182, 63-31854, 63-31855, 63-3583, 63-31841, 63-31842, 63-31839, 63-31840, 63-7533 and 63-7177

Dear Ms. Hofstetter:

This letter is a response to two letters that you submitted to the Department dated May 25, 2007, regarding the transfer and water rights referenced above. One of your letters asked if the Department anticipates any regulatory developments that may affect the diversion or use of any of the rights. Your other letter posed several questions regarding the status of the transfer.

The rights are in the Department's Administrative Basin 63, but outside the regulatory water district that currently administer surface water rights in the upper Boise River. The rights are not in any existing regulatory area and the Department does not anticipate any regulatory developments in the area in the near future. However, all rights are subject to enforcement pursuant to Section 42-351, *Idaho Code* to ensure compliance with their authorized diversion and use.

You indicated in your letter that approved Transfer 71619 has not been implemented and the deadline requiring completion of the transfer has passed. You also indicated that the property remains irrigated pursuant to the pre-transfer rights. I will address your questions in the order presented.

1. *If nothing has been done yet to implement Transfer No. 71619, would IDWR's position be that the water rights remain in effect in their full pre-Transfer (licensed) status?*

The transfer approval re-defines each right, but also provides a time period to complete the change. Since the time period to complete the change has passed, the rights, as described in the transfer approval, would be the current authorization for diversion and use of water. Also

SUPPORT DATA

IN FILE # 63-03182

note that the rights are currently recommended in the Snake River Basin Adjudication as transferred and will likely be decreed as such unless some action is taken to change the recommendations prior to decree by the court.

2. *If the water rights currently are not in effect in their full pre-Transfer (licensed) status what would be the water rights' currently authorized elements, particularly, priorities, quantities, places of use and authorized uses? In other words, in what respects, if at all, would the currently effective water right elements differ from the licensed elements?*

See response to question 1.

3. *Does anything need to be done, filed or approved to reinstate the water rights in their pre-Transfer (licensed) status?*

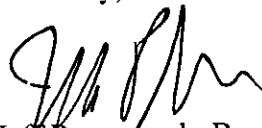
The transfer approval includes a condition indicating that failure to comply with conditions of the transfer is cause for the Director to rescind the approval. If the transfer has not been accomplished, the Director can rescind the approval and return the rights to their pre-transfer status. If the transfer has been accomplished in part, a new transfer may be required to change the rights as necessary.

4. *Could anything be done at this point to reinstate Transfer No. 71619, if desired?*

The Department could grant an extension of time to complete the transfer, upon request from the owner. Note that an extension, if granted, does not stay the accumulation of the 5-year period associated with forfeiture of a water right for nonuse.

I hope these thoughts on the questions you raised are helpful to you and your client. If you have additional questions on these issues or others, please let me know.

Sincerely,



Jeff Peppersack, Bureau Chief
Water Allocation Bureau

cc: Regional Office