

Nebeker, Jake

From: Stuart Cook <sscooktx@gmail.com>
Sent: Saturday, November 4, 2023 2:02 PM
To: Nebeker, Jake
Subject: Re: Water Right Transfer RE: 88383

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NOV 04 2023

Department of Water Resources
Eastern Region

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Jake,

Thank you for your email explaining the situation of our desire to move the POD of our ground water right onto our property.

You are correct that the property has not been irrigated since 2008. The 40 acres of The Vistas subdivision, of which our lot is a part, was acquired by BMCS Development, Inc in or around 2007. The POD for the ground water for these 40 acres falls outside the property lines of the 40 acres that BMCS purchased. The 40 acres were developed into 15 lots and in 2008 put up for sale. Our lot was purchased in 2018 by Randy and Michele Davis and subsequently sold to us in February of this year. Although the Davis' planted 30 some trees on the property, they did not utilize their water rights to water the trees. Over half of these trees have died from lack of water, but starting this summer we were hauling water to the property and watering them by hand. We plan to build our home within the building envelope of the lot starting next spring. The existing trees are at the extreme north and south of the lot and may fall outside of our 1/2 acre homestead exemption watering right (though this remains to be determined). Our main interest in moving the POD for our water right is so that we can water these trees and plant more trees once irrigation is available.

Two paragraphs of Title 42, Chapter 2, section 42-223 apply in our case.

Paragraph (8) states

(No portion of a water right held by an irrigation district shall be lost, forfeited or subject to forfeiture as a result of the exclusion of land from the district pursuant to chapter 11, title 43, Idaho Code, so long as any five (5) year period of nonuse following the exclusion does not result from circumstances over which the district has control.

Certainly, the fact that we did not own the land until this year puts the matter of irrigation over the past 12 years out of our control. We should not forfeit our right to the water simply because we only bought the land this year.

Paragraph (12) states

No portion of any water right shall be lost or forfeited for nonuse if, after the five (5) year period of nonuse, use of the water is resumed prior to a claim of right by a third party.

No third party has made a claim of right to the water in question. As soon as possible after receiving notice that our POD has been moved onto our lot, we plan to resume irrigation in order to sustain our current trees and to add to them.

Therefore it seems in line with Idaho statutes to move the POD for our water right onto our lot so that we can begin to utilize it as stated above.

If I have missed any salient points or have misread the statute, I hope you will contact us again before making a decision so that we may be able to clarify the matter.

Sincerely,

Stuart Cook

sscooktx@gmail.com

Blog: thevistas-tv.blogspot.com

On Thu, Nov 2, 2023 at 4:55 PM Nebeker, Jake <Jake.Nebeker@idwr.idaho.gov> wrote:

Stuart & Elizabeth,

Your transfer came out of advertising a couple of weeks ago. I am now reviewing it and getting it ready for approval. Every time an application for transfer goes through our office, we evaluate it for [forfeiture](#). When evaluating forfeiture, I first perform a visual inspection of aerial photography. If that does not show signs of irrigation, then I use an online tool to analyze NDVI (Normalized Difference Vegetation Index) for your property. I have attached the results of the NDVI analysis. Both sources show me that your property has not been irrigated between 2008 to 2022.

I am writing to you now, to request exceptions or defenses to forfeiture. You can find information about defenses to forfeiture within section [42-223](#), Idaho Code.

Unfortunately, this information will be required before the transfer application can be considered for approval. If you have any questions, you can call me at the number below.

Regards,

Jake Nebeker



Senior Water Resource Agent

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900 N Skyline Ste. A Idaho Falls, ID 83402

NDVI (Landsat 5/7/8/9 SR)

Annual Maximum for Apr 15 to Oct 31 at Polygon 1

