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SEP 26 2023

Department of Water Resources
Eastern Region

Application for Transfer 87701 (Gardner Farms)
Stipulated Findings of Fact

1. Application for Transfer 87701 proposes to change the point of diversion and place of use for a combined 13-acre portion of water rights 35-14407 and 35-14408.
2. The existing point of diversion for water rights 35-14407 and 35-14408 is in the SWSENE, Section 31, T01N, R36E.
3. The proposed point of diversion for the combined 13-acre portion of water rights 35-14407 and 35-14408 proposed to be changed is in the NWSWSW, Section 1, T01S, R34E.
4. The "Trust Water Area," established through the 1984 Swan Falls Agreement, is a geographic area in the State of Idaho which is intended to represent the area where surface water and ground water are tributary to the Snake River between Milner Dam and Swan Falls Dam. See Idaho State Water Plan Section 4C.
5. "Trust Water" refers to "that portion of an unsubordinated water right used for hydropower generation purposes" as defined in IDAPA 37.03.08.010.17 and 37.03.08.030.c and made available for future development as a result of the 1984 Swan Falls Settlement. See Idaho State Water Plan 4C.
6. The existing point of diversion for water rights 35-14407 and 35-14408 is located outside of the Trust Water Area.
7. The proposed point of diversion and place of use are located within the Trust Water Area.
8. The proposed diversion would be a new diversion of water within the Trust Water Area.
9. Water right 35-14407 is a split portion of water right 35-2380, which was licensed by the State Reclamation Engineer of Idaho in 1961. The licensed point of diversion for water right 35-2380 was located outside of the Trust Water Area. Water right 35-2380 bore a priority date of June 4, 1954, and was not a reallocation of trust water as described in Idaho Code § 42-203B(3).
10. Water right 35-14408 is a split portion of water right 35-8026, which was licensed by the Idaho Department of Water Resources in 1990. The licensed point of diversion for water right 35-8026 was located outside of the Trust Water Area. Water right 35-8026 bore a priority date of March 5, 1982, and was not a reallocation of trust water as described in Idaho Code § 42-203B(3).
11. Application 87701 included an analysis of the impacts of the proposed changes on the Snake River using the Department's Eastern Snake Plain Aquifer ("ESPA") Transfer Tool. Under the current thresholds utilized by the Department pursuant to an internal Department memorandum for ground water transfers in the Eastern Snake Plain Aquifer, the changes proposed in Application 87701 do not require mitigation for impacts to the Snake River.
12. According to the results of the Department's ESPA Transfer Tool, provided with the application, the changes proposed in Application 87701 will decrease depletions to the Snake River in some reaches above Milner Dam and increase depletions in reaches between Milner Dam and Swan Falls Dam.

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13. The proposed point of diversion, which delivers water under other irrigation water rights to separate acres, is regulated by the watermaster for Water District 120, and is already equipped with a flow meter.
14. Although the proposed place of use has been irrigated in the past, the water rights associated with those acres have been transferred to a separate place of use in the past.
15. The applicant will use a center pivot and sprinklers to irrigate the proposed place of use.

Applicant, Gardner Farms, and Protestant, Idaho Power Company, agree that these findings of fact provide an accurate summary of the agreed to facts for this contested case (Application for Transfer 87701). The parties propose that the hearing officer adopt these findings of fact in lieu of conducting an evidentiary hearing. The parties reserve the right to file argument briefs addressing questions of law for this contested case.



September 25, 2023

Luke Marchant for Gardner Farms

Date



9/26/2023

John Simpson for Idaho Power Co.

Date

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SEP 27 2023

Cefalo, James

From: Cefalo, James
Sent: Wednesday, September 20, 2023 10:55 AM
To: Luke Marchant; John K. Simpson
Cc: Pugrud, Scott; Greg Sullivan; Henman, Christina
Subject: Application for Transfer 87701 (Gardner Farms)
Attachments: Application for Transfer 87701 - Stipulated Findings of Fact.pdf

Dear Parties:

During the status conference this morning, we reviewed some edits, additions, and clarifications to the proposed findings of fact. Attached is an updated Stipulated Findings of Fact. Please review the document and notify me of any remaining issues by the end of the day tomorrow, September 21st. If there are no remaining issues, please sign and date the document by the end of the day on Tuesday, September 26, 2023. I will then send out an order adopting the facts and establishing the briefing schedule set during the pre-hearing conference.

James



James Cefalo | Regional Manager
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(208) 525-7161 | www.idwr.idaho.gov

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Luke Marchant for Gardner Farms

Date

John Simpson for Idaho Power Co.

Date

SCANNED
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Cefalo, James

From: Cefalo, James
Sent: Monday, August 28, 2023 1:28 PM
To: Luke Marchant; Greg Sullivan; John K. Simpson
Subject: Application for Transfer 87701 (Gardner Farms)
Attachments: Application for Transfer 87701 - Draft Findings of Fact.docx

Dear Parties,

Attached is a list of draft findings of fact for your consideration. Most are derived from the application. I decided to prepare these draft facts earlier than planned to allow more time for review and comment. For Finding of Fact 4, there may be a more articulate way to describe how the Trust Water Area/Boundary was created. I included a paragraph and signature bar at the bottom of the page as a way of confirming that the parties agree to forgo an administrative hearing in this matter. Feel free to propose edits for the bolded paragraph too. I am providing the document in Word so editing is easier.

Edits and comments are due on or before September 19th. Feel free to respond earlier if you have time. Early responses may allow time for a revised draft and additional comments before the September 19th deadline.

Christina will schedule a status conference for Wednesday, September 20 at 9 am. I will hold off on issuing a scheduling order for the briefing schedule until we hold the status conference. At discussed in the pre-hearing conference, the plan is to have initial briefs due on or before October 31 and response briefs due on or before November 29.

James



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3. The proposed point of diversion for the combined 13-acre portion of water rights 35-14407 and 35-14408 proposed to be changed is in the NENE, Section 5, T05S, R31E.
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