

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE
STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR TRANSFER	)	PROPOSED
NO. 1080 OF WATER RIGHT NO. 01-0169 IN	)	MEMORANDUM DECISION
THE NAME OF LYNN LOOSLI	)	AND ORDER

On April 6, 1967, the Director of the Department of Water Resources approved Morrell Hampton's request to transfer 4.8 cubic feet per second of the right decreed to C. F. Smith on December 16, 1910 in the case of Rexburg Irrigation Company, et al vs Teton Irrigation Canal Company, et al. This right has provided for water to be diverted from the Snake River through the Reservation Canal and injected into the Blackfoot River in exchange for water diverted from the Blackfoot River for the irrigation of approximately 393 acres of land located in Sec. 6, Twp. 2S, Rge. 38E. This right, with priority date of February 21, 1890, was effectively reduced to a priority of December 14, 1891 by the change. This loss of priority resulted from the fact that the Reservation Canal's right was December 14, 1891, and could only carry water for this exchange when the canal's right could be filled. Because of the uncertainties of this exchange, when Donald Esplin had an opportunity to purchase 5.44 cubic feet per second of a Blackfoot River water right with a June 1, 1885 priority, he decided to sell the Snake River water right made appurtenant to his land by his predecessor, Morrell Hampton. The purchase agreements were made and on June 6, 1983, Lynn Loosli applied to the Department of Water Resources to transfer 4.80 cubic feet per second of water from the heading of the Reservation Canal to pumps on Conant Creek for the irrigation of 393 acres located in Sec. 16, Twp. 8N, Rge. 43E.

Notice of this proposed change was advertised in The Ashton Herald, St. Anthony, Idaho on August 11 and 18, 1983, and subsequently was protested by the Fremont-Madison Irrigation District, Squirrel Creek Irrigation and Canal Company, Don Harshbarger, Conant Creek Canal Company, Boom Creek Canal Company, and by Finlandia Ranch, Inc. These protests cited the following reasons for objecting to this proposed change.

1. If this right were transferred to Conant Creek, it would have the earliest priority on the creek and, therefore, could reduce water supplies available to existing users.

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2. The proposed change will constitute an enlargement in the use of the original right.

3. Because most of the water used on Conant Creek is through exchange of Fremont-Madison storage, the transfer of an earlier water right into Conant Creek can reduce the amount of water available for existing and future exchanges.

On January 25, 1984, a conference to hear these objections was held in the Fremont County Courthouse, St. Anthony, Idaho. The applicant was present and represented himself; Boom Creek Canal was represented by Kurt Kandler and Bruce Nyborg; Conant Creek Canal was represented by Homer Jones and Dan Zundell; Squirrel Creek Canal was represented by Charles and Martin Bergman, Finlandia Ranch was represented by Bruce D. Nyborg; and the Fremont-Madison Irrigation District was represented by Ronnie Ard, Dale L. Swensen, J. Max Mortensen and Brent J. Moss, Attorney at Law. At the conclusion of the conference, Fremont-Madison Irrigation District agreed to withdraw their protest under the conditions that 1) the transfer be restricted to prevent interference with Fremont-Madison Irrigation District's ability to deliver stored water in Conant Creek; and 2) the transfer will not be allowed to require water from upstream diversions. The applicant subsequently agreed to these conditions and, therefore, the protest of Fremont-Madison Irrigation District has been resolved. The Department has now considered the other protests and germane materials contained in the official files of the Department and based upon his understanding of the law, the hearing officer of the Department of Water Resources proposes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Conant Creek is a tributary of Falls River. Watermaster records show water rights totaling 89.4 cubic feet per second dated between June 1, 1893 and February 25, 1910 on Conant Creek. Most of these rights are later than 1900 and cannot be filled after early July of most years.

2. Most of the water used from Conant Creek is through exchange of Island Park or Grassy Lake storage where the natural flow of Conant Creek is diverted and the amount of flow is replaced by storage released from Island Park or Grassy Lake Reservoir and delivered to satisfy the older water rights downstream on the Snake River.

3. The proposed change from the headworks of the Reservation Canal to the applicant's pumps in Conant Creek will place this right some 70 miles

upstream from the original point of diversion. This change will limit the water supply available to fill this right to the water supply in Henry's Fork drainage whereas before the change, the water from the entire Snake River drainage upstream from the headgate of the Reservation Canal was available.

4. The applicant's ownership of this right is evidenced by a warranty deed dated June 6, 1983 between Don M. Esplin and Lorna C. Esplin, his wife and S. Lynn Loosli and Portia R. Loosli, his wife. Said warranty deed transfers all right, title, and interest of the right as previously changed by Transfer No. 1080 to the applicant. Bingham County records show Don M. Esplin to be the owner of the lands described as the existing place of use for the portion of water right 01-0169 to be changed by Transfer No. 1080.

5. Don Esplin has applied to the Department of Water Resources to transfer a portion of the water right No. 27-0004 to the lands from which the subject water right is proposed to be transferred.

CONCLUSIONS OF LAW

1. Don Esplin is the successor in interest to the portion of water right 01-0169 originally transferred by Morrell Hampton through transfer No. 1080.

2. The water right evidenced by transfer No. 1080 is now the property of S. Lynn and Portia R. Loosli as evidenced by a warranty deed dated June 15, 1983. Lynn Loosli has proper possessory interest to initiate a transfer of 4.8 cubic feet per second of right No. 01-0169.

3. The water supply available to fill this right will be reduced by the proposed transfer. The change will not result in a reduction of the water available to fill other water rights on Conant Creek if the transfer application is properly conditioned.

4. Lynn Loosli is entitled to transfer water right No. 01-0169 pursuant to the application he has made with conditions and limitations that prevent an enlargement of the original right or injury to other existing rights.

ORDER

Application for Transfer No. 1080 of Water Right No. 01-0169 is hereby APPROVED subject to the following conditions:

1. A measuring device of a type approved by the Department of Water Resources shall be installed and maintained as a permanent part of the diverting works.

2. The priority of this water right cannot be exercised against, or

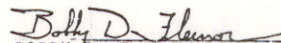
water demanded from any upstream water users on Conant Creek who divert water with a priority earlier than to June 6, 1983.

3. This right is under the control of the Watermaster of Snake River, Water District No. 1.

ANALYSIS

The protestants were very concerned that the transfer of a older water right to the bottom end of Conant Creek would interfere with all of the later rights upstream. This is possible if the water supply on Conant Creek is inadequate to supply all of the demands on the creek. This possibility should be adequately addressed by the condition that this right will not be allowed to demand water from the upstream users that were in place at the time the application for transfer was filed. In general, however, as long as there is water flowing from Conant Creek into Falls River, this right should have no more effect on the Conant Creek water rights than it did at its previous location near Shelley, Idaho. The amount of stored water used from Henry's Fork will also be reduced by the amount of water delivered to this right, since the applicant will no longer use leased stored water to irrigate the land to which this right is transferred.

Dated this 18 day of October, 1984.


BOBBY D. FLEENOR
Hearing Officer