

1921/7498

MEMORANDUM

Date: April 10, 2002

To: File

From: Jeff Peppersack

Re: Transfer Nos. 68500, 69287, and 69417
Water Right Nos. 37-2593 and 37-2705

Enlargement issues were identified with these transfers. This memo summarizes the issues, discussions, and potential resolutions.

License 37-2593

This license was issued to R.J. Struthers in 1962 with a priority date of 2/1/1957 for 6.34 cfs for irrigation of 340 acres from ground water. Irrigation use was supplemental to decreed surface water from Big Wood River.

License 37-2705

This license was issued to R.J. Struthers in 1969 with a priority date of 1/29/1965 for 6.7 cfs for irrigation of 335 acres from ground water. Irrigation use was supplemental to decreed surface water and license 37-2593 for same lands (generally) as 37-2593. The license included a condition limiting use to 1005 af/year (3.0 af/acre) when combined with all other rights appurtenant to the same land.

Transfer 68500 (old no. 5817)

This transfer was filed in June 2000 to change the point of diversion for part of license 37-2705 purchased by applicant – Robert Stilo. The warranty deed conveyed surface water rights and 0.78 cfs of license 37-2705 (no mention of 37-2593). The transfer was approved in April 2001 for irrigation of 39 acres with a diversion rate of 0.78 cfs. No enlargement issue was identified, possibly because the purpose of the transfer was simply to change the point of diversion.

Transfer 69287

This transfer was filed in July 2001 to change the point of diversion for part of license 37-2705 purchased by applicant – John Welsh. The quit claim deed provided surface water rights and 2.78 cfs of license 37-2705 (no mention of 37-2593). Enlargement was identified as an issue – see below for explanation. The transfer is pending at S.O.

Transfer 69417

This transfer was filed in Sept 2001 to change the point of diversion for part of license 37-2705 purchased by applicant – The Smet-Pleasant Family Trust. The warranty deed does not mention water rights but includes usual language regarding appurtenances to property. There is also a quit claim deed providing surface surface water rights and 1.10

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cfs of license 37-2705 (no mention of 37-2593). Enlargement was identified as an issue – see below for explanation. The transfer application was amended twice; once in November 2001 to include license 37-2593 and again in January 2002 to exclude license 37-2593. The transfer is pending at S.O

Enlargement Issue

The review files for the two pending transfers include correspondence and memos identifying the enlargement issue. Southern Region met with Struthers (see e-mail in file from Allen Merritt) to determine the status and plans for license 37-2593 and to discuss the enlargement issue. Apparently, the farm converted to sprinkler irrigation in 1974 and since that time license 37-2593 has occasionally been used to supplement other lands (300 acres or so). It is evident from information in the file that Struthers intends to retain ownership of license 37-2593. Jo Beeman, representing Struthers, was part of the enlargement discussion; she indicated that she had discussed the matter with Dave Tuthill and believes there may be a way to resolve the enlargement issue. Jo indicated that they may file a transfer related to license 37-2593 and an extension to avoid forfeiture.

At this point in time, it does not appear that enlargement is occurring except, perhaps, during those occasions when the water is used to supplement other lands (expansion claim may resolve that). It is evident that enlargement would occur if license 37-2593 is transferred to other lands/uses without 37-2705. Mr. Welsh called me on March 20 and his attorney, Jim Speck, called me on the same day to discuss Mr. Welsh's pending transfer. I indicated that the potential enlargement issue needs to be resolved prior to processing the pending transfers. Matt Howard (working with Jo Beeman) called me the same day to discuss the issue and suggested we meet to discuss further.

Meeting of April 9

Jo Beeman and Matt Howard, representing Mr. Struthers, met with Dave Tuthill and myself to discuss the enlargement issue. Matt indicated that Mr. Struthers converted from gravity irrigation to sprinkler irrigation sometime between 1974 and 1976 and was able to utilize water under license 37-2593 on other lands (those other lands also had surface water rights). We discussed the possibility of an enlargement claim for those lands. Matt indicated that Mr. Struthers was interested in moving the enlargement water right, once established, to other lands. The question that arose was: how can Mr. Struthers move the enlargement right and disconnect it from the original system under 37-2593, since 37-2593 could not be moved out from under 37-2705? Since parcels of land have already been sold off (along with parts of right 37-2705), the preferred method of creating a permissible place of use under all three rights and splitting off proportional amounts of all three rights was no longer an option. The resolution appears to be relinquishment of 37-2593 as the enlargement right is transferred away. I had previously discussed this possibility with Glen and he indicated that it would be a reasonable solution. Matt indicated that they would need to file an enlargement claim and show ownership and evidence of the development, and pursue decree of the enlargement claim prior to its transfer. Once decreed, they could file the transfer to move the enlargement right and relinquish 37-2593. The enlargement right would, in effect, be a stand alone

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right with a 1970's priority, but would include the standard enlargement conditions regarding the 1994 priority date relative to other rights.

Since the enlargement place of use includes surface water rights, the final discussion item was the transfer of the enlargement right to other lands. I indicated that a supplemental right could be transferred to other lands that include similar primary rights. A supplemental irrigation right cannot become a primary right unless it can be shown that there is no ultimate enlargement of the water rights.

Pending Transfers

Processing can proceed for the pending transfers related to license 37-2705, since they are simply for a change in point of diversion and the enlargement issue does not appear to be a problem at this point.

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