

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATION	)	
FOR TRANSFER NO. 82640 IN THE	)	
NAME OF CLINTON K. ASTON	)	ORDER DENYING
	)	MOTION TO DISMISS

PROCEDURAL HISTORY

On August 15, 2018, Clinton K. Aston ("Aston") filed Application for Transfer No. 82640 ("Application 82640") with the Idaho Department of Water Resources ("Department"). The Department published notice of Application 82640 on August 29 and September 5, 2018. Protests were filed by J & F King Farm Inc. ("King Farm"), Shelly & William Spradlin, Bob White ("White"), Kevin L. Olson ("Olson"), and Jay Norman Fannesbeck ("Fannesbeck"). King Farm, White and Olson withdrew their protests.

The Department conducted an initial administrative hearing on February 26 and 27, 2019 and a supplemental hearing on July 16 and 17, 2019.

On July 17, 2019, Fannesbeck filed a *Motion to Dismiss and Cancel Transfer Application 82640* ("Motion"). Fannesbeck argues that Application 82640 should be dismissed because Aston provided false and misleading information in the application and during the hearings.

To support his argument, Fannesbeck points to Aston's response to Part I, Question 5.g of the application form which states: "To your knowledge, [has] any portion of the water right(s) proposed to be changed undergone a period of five or more consecutive years of non-use . . . ?" Aston checked the box for "yes" and provided the following description:

40 acres of ground Twp 16S Rng 38 E. Section 9 was placed in Soil Bank in 1983, irrigation was discontinued, it was placed in CRP program in 1985, In 1996 CRP contract expired and ground was put back in production. In 1998 the ground was placed back in CRP program until present. Groundwater right is protected from nonuse while under CRP contract. This property has not had 5 years of nonuse without being in CRP.

The Department's Application for Transfer form includes the following declaration above the signature bar:

I hereby assert that no one will be injured by the proposed changes and that the proposed changes do not constitute an enlargement in use of the original right(s). The information contained in this application is true to the best of my knowledge.

I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

During the supplemental hearing held on July 16 and 17, 2019, Aston presented documents from the local NRCS office showing that the NWNW of Section 9, T16S, R38E (the acres referenced in Aston's response quoted above) was in the Cropland Reserve Program (CRP) from 1987 to 1996 and again from 1998 to 2007. There was no evidence presented at hearing that the acres in question were ever enrolled in the Soil Bank program.

Fonnesbeck argues that Aston's response to Question 5.g was a willful misrepresentation and should result in the cancellation or rejection of the application.

Rule 304 of the Department's Rules of Procedure (IDAPA 37.01.01) states: "Defective, insufficient or late pleadings may be returned or dismissed."

Although the evidence presented at hearing establishes that Aston's response to Question 5.g was inaccurate, Fonnesbeck has not shown that Aston's response was a willful misrepresentation. Aston testified at hearing that he did not obtain exact dates for the CRP enrollment until after the application was filed. Further, Aston only owns a 5-acre portion of the NWNW of Section 9, T16S, R38E and acquired that 5-acre parcel in 2006. Evidence presented at hearing related to the irrigation or non-irrigation of the NWNW of Section 9 was primarily provided by witnesses other than Aston. Fonnesbeck did not identify any other defects in Application for Transfer 82640. Therefore, Fonnesbeck's *Motion* should be denied.

ORDER

IT IS HEREBY ORDERED that Fonnesbeck's *Motion* is DENIED.

Dated this 5th day of August 2019.



James Cefalo

Water Resource Program Manager

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August 2019, true and correct copies of the documents described below were served by placing a copy of the same with the United States Postal Service, postage prepaid and properly addressed, to the following:

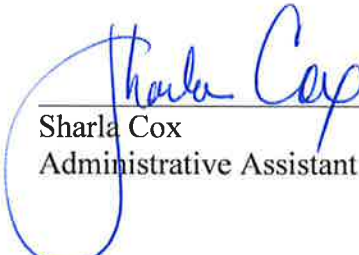
Document Served: Order Denying Motion to Dismiss

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Sharla Cox
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