

MEMORANDUM

TO: Exchange File

FROM: Vicky Music

DATE: January 18, 2011

RE: Evaluation of Sufficiency of Information Submitted

The Wilderness Ranch Owners Association (WROA) and the US Bureau of Reclamation (BOR) are co-applicants in this application to exchange 200 afa of storage water in Lucky Peak reservoir. WROA water rights are 63-4629A for 0.45 cfs/112.5 afa for irrigation (Mores Creek and shallow ground water from Galleries source), 63-10318 for 0.45 cfs/202.8 afa for municipal (shallow ground water from Galleries source), and 63-31336 for 0.12 cfs for irrigation (Mores Creek source). The BOR right is 63-3618 for Lucky Peak reservoir storage.

The application proposes to exchange up to 200 afa of 63-3618 Lucky Peak storage water for the 3 WROA rights so that WROA can exercise their rights out of priority.

The site is approximately 10 miles east of Boise and 4 miles north of Lucky Peak reservoir.

Contact person for the co-applicants is attorney, Michael Creamer of the Givens Pursley LLP firm.

Deviations from Exchange Policy Standards

The application proposes to exchange ground water for surface water. However, review of the WROA rights reveals that they divert from Mores Creek and from "Galleries" constructed to collect and divert shallow ground water.

There are specific conditions under which IDWR approves changes in source. Exchanges are rare and there is very little guidance for how to process. The exchange statute, I.C. § 42-240 states in pertinent part:

“(1) Any person holding a right for the use of surface water may make application to the director of the department of water resources to exchange water authorized to be diverted under the right with the same or a different source, or with water authorized to be diverted under one (1) or more other rights from the same source or another surface water source. If the application proposes an exchange with water under another water right, the application shall be accompanied by an agreement in writing subscribed by the person proposing the exchange and each person or organization owning rights to water with whom the exchange is proposed to be made.”

The statute clearly authorizes exchanges for surface water. There are no references to ground water. So, the simple language of the statute would seem to make this application unapprovable. However, these ground water rights are quirky. The original source of the

ground water right 63-4629A was Daggett Creek. The water quality was unacceptable for use as potable water for the subdivision and the location of the POD inefficient for the subdivision. WROA went to considerable lengths to have IDWR approve a change from surface water to shallow ground water. A shallow sand aquifer located adjacent to Mores Creek was found to be potable. The water flows from the shallow aquifer that is upgradient from the creek and is a source of water for this gaining reach of the creek. "Galleries" or long troughs about 30' deep were constructed adjacent to the creek to intercept the potable water before it reached the creek.

Right 63-10318 was similarly developed in approximately 1985. The IDWR backfiles for ground water rights 63-4629A and 63-10318 include numerous correspondence from subdivision consultants and IDWR interoffice memos describing the situation, the interconnectedness between the shallow aquifer that is the current water source and Mores Creek.

Even with an 1899 priority date, Daggett Creek cannot satisfy 63-4629A reliably. The same is true for right 63-31336 from Mores Creek with a priority date of 1946. Idaho Code 42-222, the transfer statute, does not specify that a change of source is allowed. However, IDWR policy, reflected in the transfer memo #24, allows for a change of source between ground and surface water if there is an indisputable hydraulic connection. The term "shallow ground water" has a narrow and specific definition. Due to the history of the water rights, this application would be an exception to the statutory language that appears to limit exchanges to surface water rights.

Rights 63-4629A and 63-10318 together have an authorized annual volume of 315.2 afa. Right 63-31336 does not have an annual volume. The 200 af exchange volume should be adequate to satisfy downstream rights during times of shortage when WROA hopes to divert out of priority.

Summary of Information Submitted

Authority to File:

The co-applicants are the IDWR owners of record for the rights to be exchanged. WROA is the owner of record of 63-4629A, 63-10318 and 63-31336. IDWR records states the USBOR owns 63-3618. The co-applicants have the authority to file this application.

Water Right Validity:

Right 63-3619 is presumed to be valid because the SRBA Court issued the partial decree 12/18/2008, within the past five year period.

The SRBA Court issued the partial decrees for 63-4629A and 63-31336 on 7/30/2004. The beneficial use exam for right 63-10318 was conducted in 1999 so it was not claimed in the SRBA. The right was licensed 7/19/2000. These rights are valid because beneficial use was confirmed in the 2009 aerial photograph.

Injury to Other Water Rights:

No injury is expected and, in fact, the result of this action will be to protect senior rights from injury due to WROA exercising its rights.

Enlargement of Use:

No enlargement of the diversion rate, diversion volume and/or consumptive use volume is expected.

Local Public Interest:

Avoiding injury to senior water rights in time of shortage is in the local public interest and that is what the application proposes.

Beneficial Use/Conservation of Water Resources:

The application proposes beneficial use consistent with conservation of water resources in Idaho.

Review of the application finds there is no clear inconsistency with criteria of I. C. § 42-222 preventing processing of the application.

Additional Information/Analysis / Discussion

There is no additional information needed from the co-applicants. The application will be parallel processed with the SO. There is no need to consult other IDWR programs or staff to complete my review.

Watermaster comments will be solicited. There are no other entities or individuals that need be contacted for input.

The SRBA Court issued partial decrees for 63-3618, 63-4629A and 63-31336, and the results were migrated to wr records. No SRBA claim was required for licensed right 63-10318. Data entry acted on the correct records.

SRBA status was summarized previously in the *Summary of Information Submitted - Water Right Validity* section of this memo.

There are no overlapping WROA rights at its existing POD and POU.

There are no mitigation or Water Bank issues.

Summary

Assuming protests are not filed and/or other information does not contradict the above analysis, the application can be approved as reflected by the draft approval.

Condition 046 n/a because a new well is not proposed.