

MEMORANDUM

TO: FILE
FROM: DANIEL A. NELSON
DATE: 10/9/2007

RE: GREG OBENDORF TRANSFER NUMBER 73952

The transfer proposes to split the water right and change the nature of use of a portion of an irrigation right to wildlife and wildlife storage. The place of use will remain in the same general area described as $\frac{3}{4}$ of mile northwest of Highway 51 and Tindal Road. The place of use being changed is more accurately described as S $\frac{1}{2}$ NW and N $\frac{1}{2}$ SW S7 T7S R5E, Owyhee County, the portion that will not be changed by this transfer is located in E $\frac{1}{2}$ of S12 T7S R4E, Owyhee County. The 78 acres will be retired and the appurtenant groundwater will be used to supply water for 83 acres of ponds. Applications for permit 51-12999, 51-13000, and 51-13001 will also be used to supply water to the same ponds.

AUTHORITY TO FILE:

The applicant has supplied a change of ownership form with the transfer. The transfer will change the ownership of the water rights involved in the transfer, and the ownership change will change the ownership of one of the rights that currently overlaps the place of use. The change of ownership form was filed to ensure all the rights are placed in the applicant's name. The former owners are still carrying a lien on the property, and have written a notarized statement dated 12/2/2005 agreeing to the proposed transfer. Authority to file on their portion of the water right should not be an issue.

WATER RIGHT VALIDITY:

These rights were decreed in the Snake River Basin Adjudication (SRBA) on 11/30/2000. the 2004 aerial photos available to the department show this ground was clearly irrigated at that time. Validity of the right should not be an issue.

INJURY TO OTHER WATER RIGHTS:

This property has been irrigated for several years. The change to wildlife and wildlife storage shouldn't be an issue, except that the water will be diverted at a different time of year. This is a low temperature geothermal water use, so the opportunity for injury is present. However, this well has also delivered water for fish propagation in a year round capacity, so I don't anticipate any problems as long as the annual volume limits are not exceeded.

ENLARGEMENT OF USE:

These water rights have a specific volume limitation, which will limit the volume of water diverted from the well. However, the applicant has requested the diversion volume be allowed instead of the historic consumptive use typically allowed in these types of transfers. I have discussed this in more detail below, and the explanation from the consultant for the applicant is discussed on pages 4 through 7 of the narrative. I am recommending that the historic consumptive use be used.

LOCAL PUBLIC INTEREST:

This property is in a rural area next to various wildlife facilities along the Snake River, so no public interest issues are anticipated.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES:

Applicant proposed beneficial use consistent with department standards for the area.

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

NARRATIVE

This application for transfer is joined by 3 applications for permit to provide water for a series of ponds that take up approximately 80 acres of surface area. The total volume of the ponds will only be approximately 138 acre feet when full. The ponds will average approximately 1.72 feet. The 3 applications for permit will provide surface water from unnamed drains to fill and maintain the ponds year round. The application for transfer will provide geothermal ground water from an existing well to supplement the ponds during the winter time. The main purpose of the geothermal ground water will be to keep the ponds from icing up during the winter months. The proposed season of use for the wildlife and diversion to storage will be from 10/1 to 5/31. The water in the ponds from the geothermal use will then be allowed to evaporate over the year until the next season.

One of my major concerns is that water right permit 51-7297 was filed on this well and system for fish propagation and heating. This right had measurement requirements attached to this well that were not adhered to by the previous owner. When the field exam was done on this right, the field examiner had issues concerning these conditions not being properly addressed. This permit was withdrawn, and the adjudication claim 51-10003 was filed and decreed without the measurement conditions. These measurement conditions need to be addressed in this transfer.

This application will change the nature of use for low temperature geothermal water. Originally this water source was developed prior to the geothermal statutes, which required the heat value of geothermal water must be used first. The original irrigation use did not use the heat value of the geothermal water first, but the irrigation use was allowed to continue since it had already been developed. The transfer does propose a new use, and the department does require that the statute be followed on any new change of use. The applicant has provided a statement in page 8 of 8 of their narrative, that the heat value will be used to keep the ponds free of ice for water fowl during the winter months. I believe the main purpose of this change of nature of use is to use the heat value of the water. Other applications for permit have been filed to maintain the water levels of the ponds.

The applicant has provided a historic consumptive using the Allen and Brockway information for Grandview that shows a historic consumptive use for Pasture of 3.17 acre feet per acre. Using this calculation the total volume allowed under this change of use would be 231.4 afa for water right 51-2174 and 15.9 afa for water right 51-7104 for a total of 247.3 afa. However, the consultant for the applicant, Norm Young of ERO Resources, has claimed that the volume should not be limited, because the same seepage losses and evaporation losses will still occur. This is has not been the standard of practice for the department, and many transfers have been filed and approved by limiting the flow the historic consumptive use. Therefore, we have recommended that this transfer be limited to the above volumes. I consulted with Pam Skaggs and Shelley Keen concerning this issue, and it was decided we can allow the applicant to maintain the full diversion volume on the water right as long as the pond surface area does not exceed the amount of acres being retired. **I have sent a letter to the applicant's attorney concerning this issue.**

The map doesn't show the acres being retired, but there is a note on the side of the map that states that all the lands in Section 7 will be retired for this use. This should be sufficient to provide the needed information to create the mapping required for the transfer.

During the initial processing of this application, I met with Pam Skaggs and Shelley Keen concerning some possible conditions for this application. I have included the conditions per my understanding of the meeting. One of the conditions dealt with well drilling standards for an artesian well Idaho Code 42-1603. We don't have a standard condition for this statute, so I worked with the well drilling specialist at the regional office to prepare a condition that would satisfy this area. Please check the conditions with Pam and Shelley to ensure they are correct.

The applicant has supplied a very good narrative of the overlapping water rights for this project. Please see pages 1 and 2 of narrative document provided by the applicant.

There is one issue with the overlapping water rights that needs to be cleared up. Water right 51-10003 was originally for 2 wells. The well associated with the rights involved with this transfer in Section 12 was used for the fish propagation. The water from the other well in Section 13 was used only for heating of a trailer. These two systems were not connected together at the time of the decree. They are still not connected together. The Western Region processed a change of ownership on 12/7/2007 splitting the two rights. The change of ownership split the heating portion from the well in Section 13 off from the from the fish propagation form the well in Section 12. The well in Section 13 is now on water right 51-13025, and the well in Section 12 is now The well in Section 12 had a condition limiting the water rights associated with it to 4.83 cfs and 1331.1 afa when combined with the rights in this transfer. During the change of ownership they carried this condition over to both systems, wells, and water right splits in error. They should have left this condition off of the portion of the right from It is impossible to enforce this limitation, so we brought both splits of 51-10003 (51-13025 and 51-13026) into the transfer, and removed the combined condition from the well to avoid any further confusion.

CONDITIONS AND SUGGESTIONS

Unless this transfer is protested, this proposal seems to be approvable with the inclusion of the conditions on the draft approval.