

MEMORANDUM

TO: Transfer No. 75704 File

FROM: Angie Grimm

DATE: April 15, 2010

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes to add 20 acres of BLM land currently irrigated by water from Tyson Reservoir to the place of use of the junior Tyson Reservoir storage water right 57-7400.

The site is generally located along the west and east banks of Reynolds Creek west of Upper Reynolds Creek Rd approximately 3 miles north of Reynolds and approximately 10 miles west of Murphy.

Summary of Information Submitted

Authority to File: The applicant is the current owner on file for the water right proposed for transfer. A BLM Land Use Permit was submitted by the applicant authorizing the applicant to hold a water right in the applicant's name on the BLM property for a period of 3 years. If the use continues after 3 years the water right is to be placed in the name of the BLM per the Land Use Permit conditions. The transfer approval has been drafted to include a condition stating the approval is subject to a private agreement accordingly. The applicant has authority to change the right.

Water Right Validity: Right presumed to be valid. Recent beneficial use confirmed via 2009 aerial photography and applicants' statement that the right has not undergone a period of five or more consecutive years of non-use.

Injury to Other Water Rights: Injury should not occur under this proposal provided no additional water is diverted from the source to the storage facility.

Enlargement of Use: The diversion rate will not increase as a result of this transfer. I. C. § 42-222 allows for addition of irrigation acres to a storage right provided no other water rights are injured. There is no enlargement of use proposed and the diversions will be regulated by the watermaster of Water District 57R.

Local Public Interest: Allowing the applicant to correct the water right record for currently irrigated public land serves the local public interest. The applicant has acquired a current BLM Land Use permit for irrigation of the public land proposed for transfer.

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.

Discussion

Data entry will affect the water record for the right proposed for transfer. SRBA is not applicable to this right developed after 1987. This right was licensed on 6/28/2002.

Comments will be solicited from the Water District 57R watermaster during the advertising process and incorporated into any decision issued regarding processing of this transfer.

The right proposed for transfer, 57-7400, is a storage water right with the following combined use limits recorded in the database; diversion rate of 4.6 cfs with rights 57-7472 and 57-7532 in the non-irrigation season and an irrigation acre limit of 160 ac with storage rights 57-7472 and 57-7532. A current condition of the right indicates rights 57-249, 57-252, 57-1070, 57-1073, 57-2296, 57-2325, 57-7040, 57-7400, 57-7472, and 57-7532 are limited to irrigation of 160 acres total. This list of rights includes both live flow and storage rights. It is erroneous to limit the number of acres a storage water right can irrigate due to the fact that I.C. § 42-222 allows for addition of acres to storage water rights provided no injury occurs. This condition is only found on storage water rights 57-7472 and 57-7532 with the same place of use as the right proposed for transfer. It does not appear on any other water rights in the list. Therefore, this transfer approval has been drafted to eliminate this condition from right 57-7400 and the associated rights of 57-7472 and 57-7532. In this instance, it may be appropriate to edit the existing condition to only list the live flow water rights and the corresponding number of acres these rights are limited to in combination, but such a condition does not exist currently on the live flow rights and it would be outside the scope of allowable modifications of associated rights within transfer processing to add such a condition.

Rights 57-7472 and 57-7532 do not need to be in the transfer, other than as an associated right as mentioned above, because not all of the storage rights with a common place of use must be changed. It is acceptable to choose one or any combination of these rights to add the additional acres to. Rights 57-252, 57-1070, 57-2325, 57-7040, 57-7400, 57-7472, and 57-7532 are diverted through the same point of diversion. These rights do not need to be included in this transfer, because there are no changes to the point of diversion or quantity diverted proposed. No other applicable overlapping rights have been identified as of processing of this transfer.

Currently, per licensing review, right 57-7400 provides primary irrigation water for 19 acres that do not have live flow irrigation rights and supplemental irrigation water for the remaining 52 acres within the current place of use that do have live flow irrigation rights. This transfer proposes an additional 20 acres to be added for primary irrigation with this right. Therefore, the right will authorize primary irrigation of 39 acres, and supplemental irrigation for the other 52 acres. The standard headgate volume for this area is 3.5 af per acre. Right 57-7400 authorizes an irrigation from storage use of 150.0 af per year, equating to full/primary irrigation of approximately 43 acres, which is less than the total of 39 proposed by this transfer. This, along with the fact that irrigation of the 20 acres proposed is a current ongoing practice, indicates irrigation of these acres from Tyson Reservoir water is a viable beneficial use.

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 is not applicable as a new well is not proposed. However, condition R40 will remain a condition of the right, because Dam Safety regulations apply to the reservoir authorized for this right.