

MEMORANDUM

TO: Transfer No. 73890

FROM: Michele Edl

DATE: 1/12/2011

RE: Evaluation of Sufficiency of Information Submitted

The purpose of the transfer is to allow year-round diversion into a pond for aesthetic purposes. The transfer acts on decreed water right 63-10029 and requests changes in the nature-of-use, the season-of-use, the place-of-use and to add two existing wells as points-of-diversion.

The proposed PODs and the proposed POU are located in section 32, township 4 North, range 1 West, Ada County. The proposed PODs are existing wells located in the SWSW of section 32. The proposed POU (an existing pond) crosses the SWSW-NWSW quarter line, of section 32 approximately 0.1 mile west of Star Rd and 0.25 mile north of Ustick Rd.

The contact person for the applicant is John H. Sterling.

Deviations from Transfer Policy Standards

In my review of the backfile for right 63-10029, I found that the volume recommended by the field examiner had not been carried forward into the license. At licensing, the reviewer had not understood the season-of-use for mint distillation and increased the season from the 40 days recommended by the examiner, to 214 days; the number of days in the irrigation season. The licensed volume, 177.4 AF, was based on 214 days. That inflated volume persisted through the SRBA and was an element of right 63-10029 when it was decreed in 2007.

This transfer proposes a change in the nature-of-use which required a determination of the historical consumptive use of the right. Only that historic consumptive use volume is available for transfer to the proposed new uses.

Summary of Information Submitted

Authority to File:

The applicant, Sterling Landscape Co., is registered with the ISOS, (No. C46899). John H. Sterling, President, signed the application.

The application includes a Warranty Deed (dated January 24, 2001) which conveyed the place-of-use property, from Robert and Marilyn Friday to Sterling Landscape Co.

Water Right Validity:

Right 63-10029 is presumed to be valid because the partial decree was issued to the applicant on 2/16/2007.

As of January 1, 2011 the right has been released from the Water Supply Bank.

Injury to Other Water Rights:

No new injury is anticipated.

According to available Ada County taxlot information, Sterling Landscape Co. is the current owner of the property at the points-of-diversion and the place-of-use.

The wells have been in existence and in use for several years.

Enlargement of Use:

No enlargement is anticipated.

This transfer requests a change in the nature-of-use of Decreed Right 63-10029 from commercial to aesthetic and aesthetic storage. The transfer provided the opportunity evaluate the actual historic consumptive use, which was much less than the amount licensed. I requested and received confirmation from the applicant that he intended to pursue the transfer in spite of the change in available volume.

The backfile and historical use documentation indicate that land application of waste water (distillation byproducts) was a use of right 63-10029. However, the transfer requests the full rate be diverted, year-round, to the new use. The applicant's water rights 63-5015 and 63-31306 can fill the entire irrigation requirement. Land application of waste water will no longer be associated with this right.

Analysis of the pond's evaporative loss was based on the nearest NWS co-op station, Caldwell 101380. (See attached email documentation). Even with the downward adjustment, the available volume is sufficient to cover storage and consumptive losses.

Local Public Interest:

No negative issues were identified.

The application will be subject to public notice and protest.

Beneficial Use/Conservation of Water Resources:

The proposed uses are 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 &/or Analysis

The Department doesn't have a mechanism to quantify local injury from a change in well/point-of-diversion in this area. The three wells which are the diversion points have been in place for several years. The current policy is to rely on 'reasonable' pumping rates.

This groundwater area is not yet under a watermaster's control.

**No additional information is needed from the applicant.
No additional IDWR analysis is needed.**

Discussion

The topographic map submitted with the application confirms the location of the proposed pond. The pond is visible in 2004 and later aerial photography. I created the POU shape file for this transfer to match the surface area and general shape provided in the application. The pond discharges into an adjoining drain. That drain appears to discharge into Five Mile Creek.

The pond occupies a 1.5-acre portion of the 75-acre field irrigated by ground water rights 63-5015 and 63-31306. These two rights are sufficient to meet the entire irrigation requirement. The field may also be irrigated with surface water from Settlers Irrigation District.

In addition, the 40 acres in the SWSW, are the place-of-use for surface water right 63-2169 licensed to John Jepsen in 1979. This right has not been claimed in the SRBA.

The existing POD and the additional PODs proposed by this transfer are existing wells that also serve as diversion points for 63-5015 and 63-31306. The database did not have the correct locations for the wells. I requested confirmation of the well locations from the applicant. I emailed him a screen shot of a 2009 aerial photo of his property supposing the locations of two well and asking for confirmation.

In follow-up phone conversations and email exchanges with the applicant, he clarified the aesthetic use location and the locations of the wells. He also requested that the application be amended to include a third POD.

The transfer has been amended to include a total of three wells which are points-of-diversion for this transfer. They are described to the 10 acre tract as required by Transfer memo 24.

Although I have not been able to associate Well Driller's Reports to the two oldest wells, they have been in existence and in use for several years. I believe

that they are tagged with A0002443 and A0002442 and are deep enough not to impact surface water.

The AJ Claim backfile documents that wells A0002443 and A0002442 were artesian and may not have been properly controlled. A pending notice of violation was issued in Feb 2005. Western Region staff confirmed that the NOV issue has been resolved.

Data entry affected the correct record.

Although the original transfer application was submitted to Western Region in 2006, the transfer acted on a right claimed in the SRBA. Processing of the transfer application was delayed until the right could be acted upon by the SRBA court. I was assigned to the transfer in January 2009 and my review of the file prompted an amended application which was received 12/17/2010. The Western Region Office will need to complete the legal notice/advertising steps.

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.