

MEMORANDUM

TO: FILE
FROM: DANIEL A. NELSON
DATE: 11/17/2003

RE: BRACKETT RANCHES LTD TRANSFER, RIGHT 51-12898A

The transfer proposes to incorporate Triangle reservoir with the Louisa Creek Reservoir as a shared place of use for storage for this water right. The Triangle Reservoir is located in the SESE S30, NE S31 and NW S32 T7S R2W. The Louisa Creek Reservoir is located in the SWNE and NWSE S6 T8S R2W. The applicant has been required by the Idaho Department of Water Resources (IDWR) Dam Safety Protection Program (DSPP) to reduce the height of the Louisa Creek Reservoir and reduce the amount of storage in that reservoir by approximately 20 acre feet of water. The applicant wishes to move the excess storage downstream to the Triangle Reservoir until Louisa Creek Reservoir can be replaced or repaired.

AUTHORITY TO FILE:

The applicant is the same name listed on the SRBA decree for this water right. John Steiner supplied a copy of the will for Charles W. Steiner giving him full control over the property and water rights for Triangle Ranch. The Louisa Creek Reservoir is located on Bureau of Land Management (BLM) property. However, this proposal is the result of an agreement between BLM, IDWR, and the Steiner's to reduce the dam size for safety reasons. Therefore, Authority to file this application should not be and issue.

WATER RIGHT VALIDITY:

This water right was decreed in the SRBA on 11/18/1998. Therefore, Validity of the right should not be at issue.

INJURY TO OTHER WATER RIGHTS:

This right and the Louisa Creek Reservoir have been in use for several years. The Triangle Reservoir is co-owned by the applicant. The other owner of the Triangle Reservoir, Wintercamp Ranch Trust, will be sent a comment letter to ensure they are aware of the proposal. The Triangle Reservoir only has approximately 40.8 acre-feet of storage above the current licensed storage rights available in the reservoir. Please refer to the review memo attachment teacup diagram. Only 20 acre-feet of storage is needed to cover the current reduction to the Louisa Creek Reservoir Dam. This should leave approximately 20.8 acre-feet of storage available in the Triangle Reservoir for future needs. There could be a problem if the applicant is required to breach the Louisa Creek Dam.

NARATIVE

The biggest issue for this application is the overlapping water rights in the reservoir. I have spoken with John Westra, Steve Lester, and the applicant on this issue and we all agree that limiting the initial storage of water from 55-10351 in the Triangle Reservoir is the only way to ensure a fair allotment of water the two parties using Triangle Reservoir. The remaining conditions regarding overlapping water rights originally decreed for this right should be included in the transfer approval. Please see Jan Shurte's adjudication review of the overlapping rights in review memo attachment adjudication overlap review.

John Westra has put forth a great deal of time and effort to ensure that all the parties involved with these reservoirs are not hurt by the reduction of the Louisa Creek Reservoir Dam. The dam safety division of IDWR required the applicant to remove the Parapet wall on the dam. Mr. Westra estimates that the removal of this wall will reduce the storage capacity of the reservoir by approximately 20 acre-feet.

The spillway for the Triangle reservoir has been reworked over the years for safety reasons. The repairs to the reservoir have increased the amount of water that can safely be stored in the Triangle reservoir to approximately 1650 acre-feet of water. This increase of storage should be sufficient to cover the 20-acre feet of storage needed from the Louisa Reservoir.

The only problem that we have had is that the Louisa Creek Dam is in very poor condition. If the dam continues to deteriorate, the dam will need to be breached. If the dam is breached, there is not enough available storage in the Triangle Reservoir for the entire 175-acre feet of storage held in the Louisa Creek Reservoir. The only immediate solution will be to allow the movement of storage from the Louisa Creek Reservoir to the Triangle Reservoir, as long as the Louisa Creek Reservoir storage rights are subordinate to the Triangle Reservoir rights.

If the applicant is required to breach the Louisa Reservoir, only 40.8 acre feet of water would be available during the initial filling of the Triangle Reservoir from water right 55-10351. The remaining 134.2 acre feet of storage from 55-10351 would be limited to a second filling of the reservoir if water was available. This will cover the applicant's immediate need to store the 20-acre feet lost by the reduction of the dam. This transfer will also give the applicant the time needed to either rebuild the Louisa Creek Reservoir or increase the size of the Triangle Reservoir to handle the 175 acre feet of storage.

These storage reservoirs have been the center of dispute between neighbors and State and Federal agencies. In a civil action, Steiner vs. Gilbert, to settle some of the dispute between the private parties, the court required that both parties retain a private consultant to deliver the water rights if a dispute over water delivery arose. These creeks are not in an active water district, but the court's decision fundamentally created a water district that is not currently recognized by IDWR. Therefore, we should condition these water rights with the same conditions required of any water right in a water district.

CONDITIONS AND SUGGESTIONS

This transfer seems acceptable as listed on the front page of the transfer with the inclusion of the conditions on the draft approval.

Mr. Stienner is being required to remove the Parapet wall on the Louisa Reservoir. The removal of this wall will reduce the Louisa Reservoir capacity by approximately 20 acre feet of water. Mr. Stienner has proposed to move that water storage down to the Triangle Reservoir also co-owned by Mr. Stienner. The Triangle Reservoir has approximately 40.8 afa of unlicensed storage capacity. 40.8 afa of storage is more than adequate to cover the storage losses resulting from the removal of the Parapet wall on the Louisa Reservoir. However, if Mr. Stienner is required to entirely breach the Louisa Reservoir dam in the future, Mr. Stienner should not be allowed to store more than 40.8 afa of water in the Triangle Reservoir under right 55-10351 until all of the existing water rights currently storing water in Triangle Reservoir have been filled. If sufficient water is available to allow a second filling of the reservoir without effecting natural flow rights, then Mr. Stienner could store the remaining 134 afa under water right 55-10351 in the Triangle Reservoir. The moving of water right 55-10351 to the Triangle Reservoir cannot affect the current rights on the reservoir.

Louisa Reservoir capacity is 175 afa. A portion of this capacity to be moved to Triangle Reservoir. Louisa Reservoir listed under water right 55-10351 owned by Stienner.

40.8 afa of storage capacity remaining.

Decree 55-10354 for Stienner allows and additional 425.2 af of storage for a total of 1,609.2 total decreed water right storage in Triangle Reservoir.

Original reservoir capacity 1184 af covered under license 55-2208A for 976.4 af (Owner Winter Camp Ranch) and 55-2208B for 207.4 af owned by Stienner.

TOTAL
TRIANGLE
RESERVOIR
CAPACITY
1650 AF PER
JOHN
WESTRA

Stienner can move up to 40.8 afa of storage from Louisa to Triangle for initial filling of reservoir. Stienner can the move the remaining 134 af under 55-10351 during the second fill. Combined storage in both reservoirs under 55-10351 would be limited to 175 afa. Stienner may utilize the storage in Louisa Reservoir per the water right as long as possible. The restrictions on storage is limited to the Triangle Reservoir as to not harm existing rights.

SUMMARY OF RECOMMENDATION FOR CHARLES STEINER - BASIN 55

55-02008 - ROCK CREEK & LOUISA CREEK

This right was based on a license with a priority date of 1908. Basically I recommended it for the same lands it was licensed for, only changing the acreage slightly to reflect current irrigated acres in those 1/41/4s. This right was recommended for both sides of Rock Creek due to the original right being from both Rock and Louisa Creek diversions. Total acres licensed = 157.

55-10352 - ROCK CREEK

Original claim was filed for 3-15-1912 based on beneficial use. However, I recommended a priority date of 11-14-1922 based on the idea that the field exam conducted in 1914 under the above licensed right 55-02008 did not mention any irrigation of other ground. The next evidence of irrigation came in a cancelled permit file. The permit had originally been filed for additional lands in the N1/2NE1/4, N1/2NW1/4, Sec. 25. However, due to no proof of beneficial use having been submitted, the permit was cancelled. In the original days of the Dept. the requirement was to file proof of completion of works and proof of beneficial use. If one was filed and the other wasn't, then the permit was cancelled. In this cancelled permit file there was proof of completion of works filed stating that the water had been put to beneficial use 10 years prior to the lands in Sec. 25. However, 10 years earlier would have been 1912 since the proof of completion of works was dated 1922. Because the field exam under 55-02008 was conducted in 1914, and these acres were not mentioned, I used the date of the notarized proof of completion of works as the date of priority for this right, 11-14-1922. Also submitted with this file were the homestead papers of Arthur Corlett which did show his intention to develop this land in Sec. 25. This right was recommended for an additional 71 acres of land irrigated within the same legal as the permit was filed for, N1/2NE1/4, N1/2NW1/4, S.25. These lands are lands that only Rock Creek water could be used to irrigate.

55-04150 - LOUISA CREEK

This right covers what Louisa Creek could have irrigated over and above those acres covered under Right No. 55-02008 for the liveflow (cfs) portion. There is no evidence that more water and acres were diverted &/or irrigated from Louisa Creek between 55-02008 and the building of the Louisa Creek dam in 1931. The lands covered by this right are lands South of Rock Creek that could have been irrigated from the Louisa Creek ditch. The acres in the W1/2NW1/4, and SENW, Sec. 31 are not included due to Lester Buck's affidavit which stated those lands were not irrigated until Triangle first filled in 1967. Those acres are covered under 55-10353 & 55-10354. The priority date is based on the above idea that there is no evidence that these lands were irrigated prior to the license issued under 55-02008 and not until the dam was built in 1931.

55-10351- LOUISA CREEK STORAGE

This right covers the storage right for Louisa Creek Reservoir which was built in 1931. The acres listed in this right are the acres that could have been irrigated via the Louisa Creek ditch and are all South of Rock Creek, except for the acres irrigated in the W1/2NW1/4 and SENW, Sec. 31 per Lester Buck's affidavit as explained above. Evidence of the date this dam was built is also from a cancelled permit 55-02171 which was filed for Louisa Creek dam specifically. This permit was cancelled for the same reason as before - proof of completion of works were submitted but not proof of beneficial use. Louisa Creek Dam was obviously completed in 1931 - per dam safety files also - however, as in many permits in those days, proof of completion of works was submitted and not proof of beneficial use. The proof of completion of works is a signed and notarized affidavit stating the work was completed and other documents from the file noting the dam was completed in 1931.

55-02152A & 55-02208A - ROCK CREEK & LOUISA CREEK LIVEFLOW & STORAGE IN TRIANGLE RESERVOIR

These rights have both been previously licensed and were licensed for 96 acres of land. I have recommended them both for the same 96 acres although they overlap with some of the acres under the earlier rights. The reason for this is due to the possible litigation concerning the following 1967 rights. Since these were licensed for the 96 acres, they should remain so in case the 1967 rights are compromised. These acres were determined based on contour lines rather than on an aerial photo. The earlier right listed above are evidence that more than 96 acres were irrigated at some point prior to these licenses.

55-10353 & 55-10354 - ROCK CREEK & LOUISA CREEK LIVEFLOW & STORAGE IN TRIANGLE RESERVOIR

These rights have been recommended to pick up the additional acres not listed under the previous rights. Especially those acres in the W1/2NW1/4 and SENW, Sec. 31 listed in Lester Buck's affidavit stating that those acres were first irrigated in 1967 after Triangle Reservoir first filled. An ASCS map dated in 1969 does show the ditch from the south headgate flowing around these lands in the NW1/4, Sec. 35 thus indicating these lands were irrigated by then. The 1967 date comes from Lester Buck's affidavit. The additional 31 acres recommended in 55-10353 are acres that needed to be covered from either Rock Creek or Louisa Creek to be sure they were covered by both sources in the end. For instance, the 2 acres in the NESW, S30, and the 3 acres in the NWNE, 1 acre in the SWNE, 1 acre in the NWNW, 3 acres in the SESE, S25, were to cover irrigation from Rock Creek that had not been previously covered. Then, the acres in the NWSW(6), NESW(2), S30, NENW(10) and NESE(5), S25 were listed to cover irrigation from both sources that had not been previously covered. NOTE: The difference in acres for each right comes from one being for liveflow, 55-10353, where many of the acres were previously covered under other rights and the other for storage from Triangle where only 96 acres had been previously covered. The remaining 297 acres for storage are being covered under 55-10354.

DESCRIPTION OF DIVERTING WORKS - TRIANGLE RANCH - CHUCK STEINER
55-02008, 55-02152A, 55-02208A, 55-04150, 55-10351, 55-10352,
55-10353 & 55-10354

TRIANGLE RESERVOIR

Triangle reservoir is located on Rock Creek with a 29' high dam and 1184 af of storage. Louisa Creek flows into Triangle reservoir in the NENE, S31, T7S, R2W, therefore, Triangle reservoir collects both Rock Creek and Louisa Creek water. The reservoir water is diverted via two headgates - the North headgate and the South headgate.

North headgate - this headgate diverts water to irrigate lands in the SW1/4SE1/4 & SW1/4, Sec. 30, north of Rock Creek, before entering the Hatton diversion reservoir and dam in the NWSW and SWNW, S30. A diversion from the northside of Hatton Reservoir in the NENE, Sec. 25, carries the water to the lands in the N1/2NE1/4 and the N1/2NW1/4, S. 25, aka the Corlett homestead. This ditch continues west to irrigate lands owned by the Wintercamp Ranch Trust under 55-02006, 55-02152B and 55-02208B. There was evidence of a ditch that diverted on the southside of Hatton Reservoir to the lands south of Rock Creek in Sec. 25, T7S, R3W, however, it was not in use at the time of the field exam due to a rockslide covering the ditch.

At the time of this exam there was a ditch which crossed over from the North headgate ditch and diverted water in a westerly direction to irrigate the remaining lands in the SWSE & SW1/4, Sec. 30, south of Rock Creek aka the Bachman homestead.

South headgate - this headgate diverts water south from Triangle reservoir. It divides into two ditches with both heading south to catch ponds and joining in the NENW, Sec. 31 (along with the Louisa Creek ditch described below) and continue as one in a westerly direction irrigating lands in the NW1/4, Sec. 31 and the E1/2SE1/4, Sec. 25. The ditch continues west to a small diversion pond located in the center of the SE1/4, Sec. 25. Water is then dispersed north to irrigate lands in the N1/2SE1/4, S1/2NE1/4, Sec. 25, south of Rock Creek, and west to another small diversion pond in the SENW, Sec. 25. The water continues from this pond in a northwesterly direction to irrigate lands in the SENW, NENW, Sec. 25, south of Rock Creek. These lands in the N1/2SE1/4, S1/2NE1/4, E1/2 NW1/4, Sec. 25 were aka the Bachman homestead.

LOUISA CREEK RESERVOIR

Louisa Creek reservoir is located on Louisa Creek with a 41' high dam and 175 af of storage. The Louisa Creek ditch diverts out of Louisa Creek below the reservoir in the NESE, Sec. 31. It heads north towards Triangle Reservoir, then turns and heads west to where it joins the ditch from the South headgate in the NENW, Sec. 31. See the description of where this ditch then heads and which lands it irrigates as described above under the South headgate.

In order to avoid injury to the existing water rights in the Triangle Reservoir, the water right will need to be conditioned to only allow 40.8 acre feet of storage in the Triangle Reservoir from water 55-10351 during the initial filling of the reservoir. The remaining 134.2 acre feet of water from the Louisa Creek Reservoir could only be stored in the Triangle Reservoir as a second fill water right or after the all of the existing water rights in the Triangle Reservoir have been fulfilled. Below is a proposed condition for this situation.

Storage of water in the Triangle Reservoir from 55-10351 will be subordinate to water rights 55-2208A, 55-2208B, and 55-10354. All water from water right 55-10351 stored in Louisa Creek Reservoir will retain its priority date of 6/10/1931.

ENLARGEMENT OF USE:

This system has been in place for a number of years. The Triangle Reservoir was originally designed with a capacity of 1184 acre-feet of storage. However, improvements to the dam have raised the free board of the dam to allow approximately 1,650 acre-feet of storage to be safely stored behind the dam. These calculations were determined by John Westra of IDWR dam safety program. The water from the Louisa Reservoir has historically been diverted through the Triangle Reservoir to the lands described in the water right. Therefore, the only true change to the system will be the reduction of water stored in the Louisa Creek Reservoir and the increase of water stored in the Triangle Reservoir. The amount of water stored, diverted, and consumed will not change from the original decreed amount.

LOCAL PUBLIC INTEREST:

This ranch and water system has been in use for a number of years. Our office has no information to suggest that this application is not within the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES:

This ranch and water system proposes beneficial use consistent with conservation of water resources in Idaho and has been operating using licensed water rights with the State of Idaho.

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