

MEMORANDUM

Date: December 17, 2009
To: Water Right File 95-2164
From: Nick Van Dyke
Re: Application for Transfer 75824, City of Coeur d' Alene

Transfer 75824 proposes to incorporate Right 95-2164 into Coeur d' Alene's municipal delivery system. Currently Right 95-2164 authorizes diversion from groundwater for irrigation purposes of 3.61 cfs on 316 acres. The City would like the right to remain as irrigation to retain the irrigation volume allowed, 948 acre-feet, versus converting the right to municipal use limiting the volume to the consumptive amount, 632 acre-feet. The application also proposes to describe Right 95-2164's new place of use as within the City's generally describe place of use. This would allow flexibility in what lands could be irrigated as land use changes with development without requiring the filing of a transfer. Idaho Code 42-219(2) says:

(2) If such use is for irrigation, such license shall give a description, by legal subdivisions, of the land which is irrigated by such water, except that the general description of a place of use described in accordance with subsection (5) or (6) of this section may be described using a digital boundary, as defined in section 42-202B, Idaho Code. If the use is for municipal purposes, the license shall describe the service area and shall state the planning horizon for that portion of the right, if any, to be used for reasonably anticipated future needs.

In an August 28, 2009, letter to the City's attorney, I wrote that 95-2164 would not qualify for a general description of the place of use because it does not meet the criteria of subsection 5 (must be for the irrigation of 25,000 acres or more, or within an organized irrigation district) or subsection 6 (must be surface water). I therefore suggested two options: 1) to maintain the right as irrigation the land to be irrigated be described by legal subdivision, 2) 95-2164 could be described by a general place of use description if the nature of use is changed to municipal.

It has come to light that a recent decision SRBA decision on claims filed by the City of Pocatello may not be consistent with the two options presented in my letter. This memorandum summarizes the City of Pocatello SRBA claims and two other cases that involve the completed or proposed inclusion of an irrigation right to a municipal system.

City of Mountain Home, Transfer No. 72128:

Transfer 72128, approved November 3rd, 2006, authorized two groundwater irrigation rights to be diverted and used within Mountain Home's municipal delivery system. In a letter from Brockway Engineering to the Department regarding the transfer, Chuck Brockway wrote that after meeting with IDWR staff, it was decided the rights could be transferred into the City's system as irrigation as long as it could be demonstrated the amount of irrigation performed within the City would always be greater than

the historical irrigation of the rights being transferred. It was then proposed by Brockway that the City would monitor and submit reports to adhere to the requirement mentioned above. Two conditions were developed by IDWR and placed on the approval:

- Every 5 years, or more or less frequently if deemed necessary by the department, the right holder shall submit an analysis of the number of acres irrigated within the authorized place of use that are not already covered by Mountain Home Irrigation District or other surface water rights, which will include an aerial photo clearly designating all lands being irrigated.
- The right holder shall submit a report annually to the department demonstrating that the water diverted under rights 61-2167 and 61-2210 is necessary to satisfy demands for irrigation use during the authorized period of use. The annual report shall include the maximum weekly volume diverted for all purposes during both the irrigation season and the non-irrigation season. The annual report shall also include the total volume diverted for all purposes during both the irrigation season and the non-irrigation season. After specific notification by the department, the right holder shall provide to the department any data used to compile the report.

It appears no report(s) have been submitted nor has the Department requested them.

City of Pocatello:

After discussion with adjudication staff, I identified two separate instances that may have caused the reason for concern in Department consistency. Water Right Nos. 29-7118 & 29-7119 were both licensed in 1973 as irrigation rights with an irrigation season of use. According to the Special Master's Recommendation Report, Pocatello asserted these rights should list municipal use because the land appurtenant to both rights had been under the City's biosolids treatment program since 1981. Before going to trial, IDWR had been unwavering that the rights should remain irrigation. During the trial however, IDWR changed course and agreed the rights could be described as municipal so long that the season of use remains as it was licensed. The special master concluded the same and the purpose of use currently is to be deemed as municipal and the season of use unchanged from how it was licensed.

Water Right No. 29-2382 was licensed as a domestic and irrigation right for 3.82 cfs on 320 acres. No volume was listed on the license. Thru an accomplished change in use, the right was decreed as municipal use. The decree does not list a legal description for the place of use, instead a condition of approval states:

"Place of use is within the service area of the City of Pocatello municipal water supply system as provided for under Idaho Law. This right is used for the irrigation of the Highland Golf Course."

As licensed, no volume was listed for 29-2382. The decree lists 450 acre-feet. This was calculated not by the consumptive value of the 320 licensed acres, but instead the consumptive amount associated with acres under the decreed use, irrigation of the Highland Golf Course.

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City of Rathdrum:

The City of Rathdrum has a situation similar to that of the transfer proposed by Coeur d' Alene. Rathdrum has acquired several irrigation rights that were licensed without the generally described place of use provision. The City would like to transfer in the rights as irrigation to retain the full irrigation volume amount to assist with peak summer demands. Additionally, Rathdrum is proposing a generally described place of use to avoid future transfer fillings resulting from changes in land use as development occurs.