

MEMORANDUM

TO: Application for Permit No. 63-32146 & Transfer No. 73768 Files

FROM: Angie Grimm

DATE: January 21, 2010

RE: Evaluation of Sufficiency of Information Submitted

Application for Permit 63-32146 was filed by the City of Boise Parks and Recreation Department (City) for the storage volume of an aesthetic/wildlife/recreational/municipal pond at a municipal park known as the Optimist Park. The proposed source for the unlined pond is shallow ground water tributary to the Boise River above Star. Boise Valley Irrigation Ditch Company (Ditch Co.) filed accompanying Transfer No. 73768 to change water right 63-31832 to mitigate for the consumptive use associated with the pond. The transfer states the pond is filled and water level is maintained via diversion of irrigation water to the pond. The transfer proposes a nature of use change for approximately 1.7 acres of irrigation (0.03 cfs and/or 6.0 af) allowing for a "1:1 pond swap".

The City's Optimist Park is located on the south side of Hill Rd and east of Horseshoe Bend Rd just over 2 miles east of Eagle. The pond is approximately ¼ mile east of Horseshoe Bend Rd inside the park. The largest portion of the Ditch Co.'s current service area is generally located north/northeast of the Boise River from 1 mile east of Eagle south/southeast approximately 6 miles along Hwy 44 (State Street). The P/D for right 63-31832 is the diversion site shared with Farmer's Union Ditch Co. LTD located on the Boise River in the Garden City/Boise area. The irrigation P/U service area and P/D for the Ditch Co. will not change as a result of this transfer.

Summary of Information Submitted for Transfer 73768

Authority to File: The applicant is the current owner on record. The applicant has authority to change its own right. The associated rights affected by this transfer are also owned by the applicant. The applicant is authorized to do business in the State of Idaho as they are registered with Idaho Secretary of State under Organizational ID C18390.

Water Right Validity: The right is presumed to be valid, because the partial decree was issued on 2/19/2009 within the past five year period.

Injury to Other Water Rights: No injury has occurred nor should occur as there will be no change to the current amount of water being diverted or the method used to divert the water to the affected land. Water historically diverted for irrigation will continue to be

diverted. The City will divert all the water associated with their current irrigation shares to the pond. Maria Minicucci, the City, confirmed via phone conversation 12/17/09, water is diverted gravity flow to the pond and pumped from the pond for irrigation. All irrigation shares associated with the park land are diverted to the pond and are subsequently diverted from the pond for irrigation. The water associated with the land to be irrigated, minus the 1.7 acre pond surface area, will be pulled out of the pond and rediverted within the limits of the "24-hour rule" for uses from storage. There will be no reduction in quantity of water available for other water rights. The water right holder will not be put to any unreasonable effort or expense to divert the water since diversion practices will remain unchanged except the water previously applied to a crop will now be placed in a pond at the same location. Water quality may be enhanced by taking out cultivated acreage and replacing it with the pond and nearby wetland area.

Enlargement of Use: The applicant does not propose to enlarge the use. There will be no increase in the diversion rate, diversion volume, or extent of beneficial use as a result of the transfer. The number of acres authorized for irrigation within the Ditch Co.'s boundary will be reduced by 1.7 acres to allow for the nature of use changes proposed for mitigation of permit application 63-32146. Historically, the 1.7 acres was irrigated pasture per Maria Minicucci (the City) comments during our phone conversation 12/17/09. Pasture grass is considered a highly consumptive crop. This allows for a "1:1 pond swap". The period of use proposed for the Aesthetic Storage nature of use change is year round, rather than the irrigation season, which is consistent with previous Transfer No. 66743 approval for a similar nature of use change for another pond just east of this pond. Considering a de minimus amount of consumptive use due to evaporative losses will occur during the non-irrigation season and the diversion to storage use shall be limited to the irrigation season, no enlargement should occur should a year round period of use be approved for the Aesthetic Storage use. 5.49 cfs of the currently authorized 49.51 cfs of right 63-31832 is conditioned for conveyance losses. The transfer does not propose irrigation of additional acres and will include the current conveyance loss condition upon approval, therefore no enlargement shall occur.

Local Public Interest: Transfer proposes mitigation for an aesthetic, wildlife, recreational, and municipal pond in a city park. Changing the nature of use for 1.7 acres of irrigation is minimal and will not significantly impact the local agricultural base. Use of the same amount of water for mitigation instead of irrigation on city land for a park serves the local public interest.

Beneficial Use/Conservation of Water Resources: The application proposes beneficial use(s) 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.

Summary of Information Submitted for Application 63-32146

The application proposes aesthetic, wildlife, recreation, and municipal storage for a 20.4 AF (1.7 ac surface area) pond. The application indicates the excavated pond fills with shallow ground water, from 1 ft to approximately 22 ft, which is tributary to the Boise River. This use is subject to Watermaster control due to the use of shallow ground water tributary to the Boise River. As such, a request for comments on this proposal will be sent to the Watermaster of Basin 63.

The permit application proposes two P/Ds to account for prior uncertainty with regard to which side of the 40 acre tract (QQ) line the deepest portion of the pond would be constructed on. Since the application was filed, the pond has been constructed. It is evident, from the plans and 2009 aerial photography, the deepest portion of the pond is in the NE NW Sec 14, T04N, R01E. The permit is being processed with this at the P/D accordingly. The applicant was not required to amend the application, because the intentions of the applicant with regard to the P/D for the right are clear.

The application proposes aesthetic, wildlife, recreation, and municipal storage for a year round period of use. The transfer application proposes mitigation for this use through diversion of Boise River water during the irrigation season. A de minimus amount of consumptive use due to evaporative losses will occur during the non-irrigation season.

Discussion

Transfer application 73768 proposes to change the nature of use for a 1.7 acre portion of irrigation use for mitigation of the consumptive use associated with the pond proposed in Application for Permit 63-32146. This change is proposed as a "1:1 pond swap". Shares of the Ditch Co. water will be placed in the un-lined pond during the irrigation season to mitigate the year round consumptive use of the pond. The transfer will affect the water right record of 63-31832, which is the most current record for this right. The partial decree was issued and the results were migrated prior to transfer processing and complete data entry.

The P/D for right 63-31832 is also the P/D for the following rights; 63-120G, 63-123C, 63-123D, 63-123E, 63-123F, 63-123G, 63-124Q, 63-125J, 63-126F, 63-164D, 63-165M, 63-198AG, 63-248, 63-297, 63-2360, 63-18700, 63-21729, and 63-31937. The P/D and P/U for other Ditch Co rights will not be affected by this transfer. However, the other Ditch Co rights need to be included in the transfer process as associated rights, because this transfer, if approved, will reduce the total number of irrigated acres authorized from 2808.43 acres to 2806.73 acres within the service area. The associated rights are 63-147B, 63-147D, 63-2360, 63-31198, and 63-31833. There are no other overlapping rights affected by this transfer.

The pond proposed for mitigation in the transfer is to be used for aesthetic, wildlife, recreation, and municipal storage totaling 20.4 af per the permit application. The consumptive use associated with this 20.4 af capacity pond is 6.0 af (1.7 ac surface area X 3.5 af/ac standard for the area). The purpose of the transfer application is to mitigate for the consumptive use for this pond. The transfer proposes addition of 6.0 af to the existing aesthetic storage use. This adequately describes the volume for mitigation of the pond. It is not necessary to describe all of the storage uses proposed on the permit application individually on the Ditch Co. right since the purpose of the transfer is simply to describe a volume for the consumptive use of the pond.

Previous transfer processing (Transfer No. 66743) changed the nature of use for a portion of irrigated acres to Aesthetic, Aesthetic Storage, Irrigation Storage, Irrigation from Storage, and Diversion to Storage uses for a pond constructed in an earlier development phase of the City's Optimist Park just east of the pond for which this transfer proposes mitigation. The Diversion to Storage rate (0.54 cfs) approved in the transfer was not additive. The rate represented the sum of the 0.17 cfs Aesthetic use and 0.37 cfs of irrigation use associated with irrigation at the site. The Aesthetic rate along with the storage uses created by the nature of use change resulted in the reduced amount of irrigation authorized. The Diversion to Storage use was dropped from the right sometime during the adjudication process which included 2 subsequent transfer approvals that did not add the use back into the right. I can find no documentation in the backfile records of this right indicating why this term was dropped. Processing of the current transfer allows for this term to be added back into the right to clarify all uses of the right. Adding the rate for Diversion to Storage back into the right will not increase the total diversion rate authorized under this right since the 0.54 cfs is simply another way of describing the sum of other uses. See above. A total of 0.57 cfs (0.54 cfs Transfer No. 66743 + 0.03 cfs Transfer No. 73768) shall be authorized for diversion to storage upon transfer approval. The transfer applicant was not required to amend the transfer application to include the 0.54 cfs for Diversion to Storage for this Department record correction. This transfer also allows for clarification on the P/Us and associated shapes for each use. A P/U and shape for the Irrigation from Storage use was added. The Irrigation from Storage volume created in the previous transfer approval appears to be the volume associated with the capacity of the pond.

As mentioned above, the right proposed for transfer (63-31832) is being used to mitigate the consumptive use of the pond proposed under permit application 63-32146. Right 63-31832 is a Boise River source right with a priority date of 06/01/1865. The priority date along with special conditions regarding delivery of this right ensures this right is almost always deliverable and thus a good candidate for use as mitigation for another use requiring such.

An amended application to clarify the intended nature of use change was requested in my letter of December 18, 2009. Stanley Matlock, representing the applicant as a member of Boise Valley Irrigation Ditch Co., came into the office to discuss the amendments requested and submit the amended application on January 20, 2010.

Summary

Assuming protests are not filed and/or other information does not contradict the above analysis, the applications can be approved as reflected by the draft approvals.