

MEMORANDUM

TO: Transfer No. 75115 File

FROM: Steve Lester

DATE: February 2, 2010

RE: Evaluation of Sufficiency of Information Submitted

The application introduces interesting Idaho-Oregon interstate issues. The application proposes to move an Oregon POD on Succor Creek to a proposed downstream site for the same source in Idaho under right 57-4006. The existing diversion point is about 2 miles upstream from the state border, while the proposed diversion is a little over ¼ mile downstream from the border. The general area is about 3 miles southwest of Homedale.

The application was rejected but reinstated based on tardy but diligent efforts by the applicants to finally resolve this situation that has lingered for several years for the current and previous owners. Appropriate IDWR orders were issued in this regard. There is no net benefit in forcing the applicants to file a new transfer application (typically expected for rejected applications).

The application also deletes storage components of the right, which is the nature of use change flagged in Part 1A.1 of the application.

Summary of Information Submitted

Authority to File: The application includes ownership change information allowing the applicants to file the transfer. Allow the application names connector (or) but any approval should match the ownership name connector (and).

Water Right Validity: The right was decreed in 2005. The application was filed in 2008 within the 5-year validity period of the decree. The unchanged POU is served by other rights: applicant's 57-7046, unnamed stream; Gem Irrigation District rights, primarily Snake River (Idaho rights) and Owyhee River (Oregon rights). Overlap rights are not affected.

Right 57-4006 is for water diverted in Oregon but used in Idaho. The SRBA Court decreed the right in 2005 with the following caveat:

The partial decree entered for this right is not an adjudication of the validity of those elements located outside of the state of Idaho.

IDWR legal staff noted this is not unusual result in the SRBA. Legal staff does not think additional information for the Oregon diversion is needed. However, the applicant did

provide confirmation from the Oregon Water Resources Department regarding the Oregon POD: Oregon claim SWR-263 for over 5 cfs to irrigate Oregon land under an 1885 priority (see document received 11/24/09).

The right is valid based on the recent Idaho decree and further substantiated by the Oregon information.

Injury to Other Water Rights: Most of the Idaho rights from Succor Creek are junior to the right being transferred. Moving the diversion slightly downstream across the border should not have any physical impact on those junior rights. However, injury under a legal sense should be addressed. See the 10/19/009 email from legal staff. Publishing the legal notice will help identify possible injury factors to be revisited after the protest period.

The legal notice process was completed without protest by 1/25/2010. Apparently the local community is not concerned about the proposed change. Approval of the application will not injure other rights.

Enlargement of Use: Considerable amounts of storage water are conveyed via Succor Creek for use in both states (Owyhee Reservoir project). Due to that, there is probably little difference between the amounts of water available at the Oregon diversion compared to the proposed Idaho POD. Additionally, the applicant is relinquishing the storage portion of this right (4 cfs diversion to storage and 11 af storage). Enlargement will not occur.

Local Public Interest: Prior owner Reuck attempted to establish a new Idaho POD for the same land (application for permit 57-11619). Gem Irrigation District protested that application on the basis of water availability and injury to district operations. That application was assigned to Winchester and finally voided. It was replaced with this transfer application.

Winchester provided a letter confirming the district does not oppose the transfer application (received 8/21/09). No other public interest factors were identified in the legal notice process. The application appears consistent with the local public interest.

Beneficial Use/Conservation of Water Resources: The Oregon POD included a long delivery ditch to convey water to the POU. Conveyance losses were probably significant. The applicants deleted the storage component of the right and proposed to pump 2.00 cfs to irrigate 77 acres. Conveyance losses are presumed to be minimal in a pump system. Limiting an approval to 1.54 cfs (0.02 cfs/acre) would be a beneficial use consistent with conservation of water resources in Idaho.

Discussion

The application acted on the correct decreed water right record.

The POU is also irrigated with other rights from other sources noted earlier in this memo.

There is no POD overlap at the proposed diversion site. The application identifies the diversion in the NESENW at the extreme eastern part of the $\frac{1}{4}$ $\frac{1}{4}$. The creek runs through a small part of SENW but arguably not in that 10-acre portion (see review memo attachment, also note abbreviated tracts along western edge of the section, which is the state border). Approving the diversion as SENW adds flexibility and avoids another transfer in case the diversion might be in either NWSENW or NESENW.

The SRBA Court decree included an 1889 priority date for this right. As already noted, physical injury would not occur by moving the diversion somewhat downstream into Idaho. Additionally, the application proposes to reduce the right by eliminating storage and the higher rate of flow associated with that use. Diverting only 2.00 cfs (or 1.54 cfs) would have less impact on other users than historical use under this right. Concerns about legal injury – previously discussed between SO Allocation, SO Legal and Western Region – were sufficiently covered by the legal notice process in which protests were not filed.

Approval should be limited to 1.54 cfs unless the applicant justifies a higher rate of flow based on projected conveyance losses. IDWR should seek that information before issuing this transfer.

Summary

The current draft approval assumes 1.54 cfs and a 40-acre POD. Standard conditions are adequate.

A letter seeking justification for a higher rate of flow was sent to the applicant today. A response is due within 30 days.

Approve the application at the appropriate rate of flow based on the applicant response.