

MEMORANDUM

TO: Transfer No. 75801

FROM: Vicky Music

DATE: December 4, 2009

RE: Evaluation of Sufficiency of Information Submitted

Water right 65-2590B is a surface water right with a Payette River source. This transfer seeks to change the point of diversion by drilling a shallow well on the applicants' lot that will intercept Payette River water. A change in source from a direct diversion from the Payette River to shallow ground water tributary to the Payette River is proposed.

The site is located in Horseshoe Bend, approximately 8 miles west of Horseshoe Bend, Idaho, in Gem County. The property is adjacent to Hwy 55 on the east.

Contact persons are the applicants, Michael and/or Linda Mihalka.

Deviations from Transfer Policy Standards

The application form is complete except for the QQ description in Part 1(3). However, IDWR has the information in its files that the proper QQ is the SESE, same as the POU, and this will not delay processing of the application.

The most important deviation is that the application seeks to transfer the source from a surface water source to a ground water source. This is not well articulated in the transfer application. For instance, it is not stated in Part 1, A, "Purpose of Transfer", but in Part 1B (5) (a), when describing the diversion system, the applicants state, "Drill well to show river source connection, pump and sprinklers."

Additionally, the attachments to the application attempt to show the events leading to this application and collectively provide the information that applicants are seeking a change in source. This will be discussed in the Discussion section of this memo.

Summary of Information Submitted

Authority to File: The applicants are the owners of record in the IDWR database.

Water Right Validity: Right presumed to be valid. The right was decreed more than 5 years ago in 2002, but the applicants' neighbors have prevented the right from being delivered to the decreed place of use by dismantling the delivery system and denying the applicants and other users of the delivery system, access to the system. A civil lawsuit is pending over this matter. Beneficial use was confirmed in most recent 5 years by an e-mail from the applicants to IDWR Director, Dave Tuthill, dated June 30, 2007. The e-mail states that users of the system have been denied access to the pump and motor since 2005, but did gain access in the spring of 2007. Nonuse has occurred for 2 years and is due to interference by a neighbor. So, though the transfer process does not toll forfeiture, it appears that the applicants have not been able to use the right due to interference by neighbors. This interference would likely be considered a defense to findings of forfeiture if this transfer application is not approved within 5 years of the last use in 2007.

Injury to Other Water Rights: This is a valid right and the transfer proposes to change the point of diversion to a diversion about 0.24 miles from the original POD on the Payette R. No injury is expected if the well drilled by the applicants does in fact produce water from the shallow zone that is hydraulically connected the Payette River because the applicants will be using their decreed Payette River right.

Enlargement of Use: No enlargement is proposed.

Local Public Interest: There are no public interest concerns.

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.

Additional Information and Discussion

The application included attachments A – I. Attachments A – E are from permit file 65-22885, in the name of Eugene and Joni Shepherd. The Shepherds live on the parcel immediately south of the Mihalkas. The Shepherds own water right 65-2590C. Part of the delivery system of the 65-2590 splits is on the Shepherds property. According to Attachments H - J, (correspondence between the Mihalkas and Dave Tuthill, and the B65 watermaster) the Shepherds removed their irrigation valve on the irrigation main line, which provides water from the Payette R to about 7 lots. They allowed the water to flow and waste upon their property, which renders it unavailable to the Mihalkas and other water users.

Attachments A – E are documents from the 65-22885 permit that the Shepherds have for a diversion from ground water. The Shepherds Payette R right 65-2590C and another right are used to mitigate this ground water use. The documents indicate that, originally it was the Shepherds' intent to drill a supplemental well to a depth below the first confining layer to prevent a direct hydraulic connection with the Payette R. However, files memos by Shelley Keen indicate that no water was found 200' below the first confining layer, but a large quantity of water was found at the river level. Hence, the Shepherd well was completed in the shallow zone that is hydraulically connected to the Payette R.

The proposed location of the Mihalka well is approximately 200 ' north of the Shepherd well. It is expected that the Mihalkas will encounter the first confining layer at the same 85'-107' bgl as in the Shepherd well, and will encounter river water at the same static water level, 42 ' bgl as in the Shepherd well.

The well log for the Mihalkas domestic well indicates that the static water level is about 30' bgl and the first confining layer is at 60' bgl. The domestic well is located about 500' east of the proposed new well location.

No additional information is required of the applicants, nor is additional IDWR analysis needed.

Watermaster comments will be solicited. It is not necessary to solicit comments from other entities or individuals.

SRBA status was provided elsewhere in this memo. There are no POU or POD overlapping rights. Mitigation is not an issue here.

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.

Condition 046 is applicable because a new well is proposed.

Conditions should also include this variation of condition 165:

To prevent injury to prior water rights appropriating water from the deeper aquifer and to maintain a hydraulic connection with the Payette River, the well used as a point of diversion for this water right shall be constructed and maintained in the interval between land surface and the first confining layer in the aquifer.