

MEMORANDUM

TO: Transfer No. File

FROM: Lori Graves

DATE: 12/11/2006

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes to retire 40 acres from irrigation and divert the appurtenant ground water from five existing wells for additional stockwater to be used year around at an existing dairy. Another 3000 milking cows, 600 dry cows and 3600 replacement heifers are proposed, which will double the dairy size. The transfer will also adjust the remaining place of use to reflect current irrigation and dairy practices. The site, also known as De Ruyter Dairy, is located about 2.5 miles west of Marsing and 1.5 miles north of Highway 95.

Contact person for the applicant is Darwin Vanderstelt.

Authority to File: Current water right records are in the applicant's name. The dairy and irrigation are subject to a lien holder, however, a notarized statement was not provided since the proposed expansion is being financed by the lien holder and water is not being transferred elsewhere.

De Ruyter Dairy is currently registered with ISOS, #W15024.

Water Right Validity: Rights are presumed to be valid because the partial decree was issued on right 57-2292 in 1998 and on rights 57-2335 and 57-7047 in 2003. The 2004 aerial photo confirmed existing uses listed on the rights.

Injury to Other Water Rights: Applicant was asked to supply information evaluating the effect this proposal will have on the local aquifer and neighboring wells. That information was provided in a correspondence letter from Darwin Vanderstelt dated. Please note that the Idaho State CAFO Siting Team made a suitability determination of the proposed dairy as being **high risk** because the facility is located in a high nitrate priority area with shallow ground water and in close proximity to the Snake River. Please refer to the CAFO siting team's suitability determination dated 1/8/07 attached to this memo for more details.

Enlargement of Use: As specified on Attachment B, 118 afa is required to meet the additional stockwater needs. The Allen Brockway report, using the Caldwell site and a typical crop mix over a two-year period, was used to determine the farm's historic crop consumptive use volume. Based on this information, the average consumptive use

volume/acre was calculated at 2.95 afa/ac. To satisfy the additional stockwater needs, 40 acres must be taken out of production, which has been proposed. Two overlapping rights cover the 40 acres to be converted to dairy use. To prevent enlargement, applicant unstacked the water rights, per IDWR's direction. See application Attachment D2 for details.

*****Local Public Interest:** Written documentation that the ISDA and IDEQ have been notified was requested from the applicant. Applicant was also asked to explain the effects that the dairy expansion will have on the local agricultural base. Darwin Vanderstelt's (date) correspondence letter provided...

As noted by the CAFO siting team, >25 people will be employed >60 days/year, which will make the dairy wells subject to public drinking water supply standards if also used for the domestic water supply. Condition 106 has been included on the draft transfer.

Beneficial Use/Conservation of Water Resources: Applicant proposes b.u. 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: The original transfer application was received 1/13/2006 and then was amended 8/15/2006 in accordance to IDWR's recommended "unstacking" approach documented in Attachment D2. Processing of the amended application was then delayed due to SRBA constraints.

Concerned Citizens of Owyhee County, c/o Tom and Ilene Dobbin, will be sent notice because they have requested notification with regards to all CAFO application and transfer proposals filed in Owyhee County.

Discussion: Transfer 5007 was approved in 1998 to cover the commercial/stockwater needs for the existing dairy. According to the applicant, the proposed expansion does not require additional water for commercial uses because the dairy uses a system that requires very little process water in the milking parlors. As a result, the transfer also proposes to shift some of the approved commercial volume to stockwater use on right 57-2292. After department review, this was determined acceptable because the department views the uses together as dairy and totally consumptive per transfer 5007.

The transfer also proposes to shift the p/u listed on the rights to reflect current irrigation and dairy practices. As stated in the consultant's cover letter dated 8/15/2006, transfer 5007 was approved prior to construction of the dairy, and the actual location of buildings and corrals are different than originally proposed.

Attachment D2 is administration's recommended calculations for unstacking overlapping rights 57-2335 and 57-7047. I requested department review of the consultant's original technique used to unstack rights 57-2335 and 57-7047 because of the following:

Right 57-2335 covered 292 acres at full volume within a 301 acre ppu. Right 57-7047 added additional flow/volume to all 301 acres along with non-additive flow and additive volume for stockwater. The applicant proposed bringing the extra 9 acres covered by 57-7074 up to the same average flow and full volume that covered the original 292 acres in addition to retiring 40 overlapping acres for more stockwater.

Right 57-2292 only lists commercial/stockwater uses for the dairy and was not involved in the unstacking calculations. See Pam Skaggs explanatory e-mail and a copy of Attachment D2 showing how the numbers were derived attached to this memo. The amended transfer reflects the department's recommended calculations.

Snake River water from Gem Irrigation District is also used for irrigation within the decreed 301 acre ppu. Applicant's consultant provided a document from the district indicating that the applicant is billed and delivered 189 acres worth of surface water for sections 19 and 30. As explained in the consultant's cover memo dated 12/12/2006, the applicant commingles his ground water and surface water in a common irrigation system making it impossible to determine which acres receive only primary ground water. Assuming 189 acres are supplemented, ground water can be considered the primary source on 112 acres within the 301 acre ppu. If this transfer is approved, ground water can be considered as the primary source on 72 acres within the 261 acre ppu. Should a special condition be added to indicate the supplemental/primary status of the remaining acres?

Please note that approved transfer no. 5007 covered 3000 wet, 600 dry and 3600 heifers. This transfer proposes to double those numbers for a total of 14400 cows. The applicant stated in his application to the county that the dairy currently consists of 4000 wet, 600 dry and 5000 heifers and that the proposed expansion is for another 2000 wet, 600 dry and 2200 heifers for a total of 14400 cows. Obviously, the applicant is playing a little catch-up as well as proposing expansion of his dairy facility with this proposed transfer.

Assuming protests are not filed and/or other information does not contradict the above analysis, and assuming it is determined the application should be approved, the following conditions of approval listed on the draft transfer should be applied.