

MEMORANDUM

TO: Transfer No. 66706 & Application for Permit No. 63-12459 Files

FROM: Steve Lester 

DATE: December 14, 2004

RE: Evaluation of Sufficiency of Information Submitted

This site is upstream from Star. Tim Fease and Kathy Ellensohn ("Fease") operate a small nursery business between Eagle Island and Hwy 44 slightly east of Linder Road. They have two wells, a shallow ground water pond and 23 shares of Ballentyne Ditch Company irrigation water.

Neighbors filed a complaint against the Fease pond in 1997. I investigated the complaint with several site visits. Due to the investigation, Fease hired Terry Scanlan to help file two water right actions. **Application 63-12459 was filed by Fease to cover initial fill and minor maintenance of the pond from ground water. The ditch company filed companion Transfer 66706 for two of Fease's shares to mitigate consumptive use associated with the pond.**

The situation quickly became complex and highly contentious, involving "dueling protests" against different parties. Protests continued for several years. Protests against these two applications were finally withdrawn, without conditions, in 2000.

Contacts for both applications include **attorney Bryce Farris and consultant Terry Scanlan.**

Proposed approvals for this situation are patterned after a **similar scenario** also involving the same ditch company. The Eagle River project was approved under Transfer 70262 and Permit 63-12598. Those approvals were helpful in preparing proposed conditions of approval for the Fease situation.

Some **deviations from current processing standards** naturally resulted from this older package now retrofitted into parallel processing. The deviations are not too significant and should not delay approval of both applications as explained throughout this memo.

See the **attached diagram** for an overview of this situation.

SCANNED

DEC 14 2004

(Backfile A012

Summary of Information Submitted for Transfer 66706

Authority to File: The ditch company has authority to change its water right. Fease is a shareholder as noted in transfer attachment B.

Water Right Validity: The right is presumed to be valid based on the pending SRBA recommendation.

Injury to Other Water Rights: Injury is not found.

Enlargement of Use: Rate and volume will not increase under the transfer.

Local Public Interest: Protest resolution removed any local obstacles to approval. Continued use of the same amount of water to support a nursery business serves the local public interest.

Beneficial Use/Conservation of Water Resources: The transfer proposes beneficial use 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 transfer approval.

Summary of Information Submitted for Application 63-12459

The application includes all the expected information with the following exceptions.

- Request to Process form – not included but the transfer application serves as an “immediate mitigation plan” for Basin 63 concerns. The transfer mitigates consumptive use associated with the pond. In this sense the proposed use appears “invisible” to downstream concerns for anadromous fish migration. Do not include a condition of approval for possible future mitigation.
- Water bearing zone – was not identified but can be assumed to be from land surface to about 100 feet in depth. The pond holds shallow ground water in an expanded area formerly the site of the original Middleton Mill diversion as noted on the topographic map. The existing artesian well dates to sometime in the late 1800s. Fease estimates the well is about 100 feet deep but cannot confirm this due to the lack of any records. Use the assumed water bearing zone in application approval. The situation can be reconsidered in the future if necessary, i.e., a proposal to deepen the well.

The pond covers about one acre to an average depth of about 11 feet. The source was data entered as tributary to the river based on shallow ground water intercepted by the pond as noted in application remarks. The application does not need to be revised to identify the

tributary in application item 2. Watermaster control is warranted due to shallow ground water. Use from the artesian well is limited to the smaller exempted amount in 42-111: 0.04 cfs, not to exceed 2500 gpd.

The application lists the pond capacity from shallow ground water plus minor maintenance from the artesian well.

The application does not propose any new development or well drilling activity and should be conditioned that way.

The artesian well is also featured in three pending SRBA claims as follows:

- 63-17846 - primary home (original home site)
- 63-17848 - secondary home, also includes a 1988 domestic well
- 63-30485 - irrigation plus commercial use. Commercial use covers the same nursery business, and the claim mentions the existing pond without claiming any storage. Due to differences in how allocation and adjudication processes sometimes handle systems with ponds, it is possible that this claim might one day be considered to duplicate the storage proposed by the application. A condition of approval should address that possibility.

Discussion

Taken together, the two applications provide enough information to approve year around storage in the pond plus some use of stored water for the nursery. **The permit should cover year around storage and use from storage. The transfer should mitigate consumptive use from the permit.** This would allow minor use from the pond for the nursery beyond the irrigation season, a necessary arrangement for the business.

This approach deviates from the way the applications were prepared. The applications list year around storage in the permit, while mitigation and use from storage were included in the transfer. In hindsight complimented by much more experience with local pond scenarios today, the applications should have shown storage and use from storage in the permit with mitigation during the irrigation season under the transfer. This current perspective avoids the awkward problem of showing commercial use outside of the irrigation season in the transfer. Allow both applications to be approved somewhat other than as filed. It is not necessary for the applicants to revise their applications to fit the proposed approvals based on the entire package analyzed together. Any errors in original application filings are mine, not the applicants'.

The pond covers about one acre. The nursery covers about two or three acres. Nursery plants are grown in greenhouses and in open-air containers placed on impervious mats.

Highly efficient irrigation ("commercial use") of the plants includes drip irrigation and low pressure sprinklers. Runoff collected on the mats is returned to the pond for reuse. Although detailed data are not available, it is estimated that the nursery mimics about one acre of traditional irrigation. When combined, **consumptive use from the pond surface area and the nursery is the equivalent of about two acres of traditional irrigation.** Allow this use to be mitigated by retiring two acres from the ditch company ("ground water recharge").

Ditch water can be routed to the pond if necessary via a 6" pipe connecting the delivery ditch with the pump next to the pond. The retired ditch company shares will not be left in the river. The rest of Fease's land will continue to be irrigated via traditional use of ditch shares.

A variation on the **"1:1 pond swap"** is found here. Highly consumptive crops have been grown at the site (alfalfa and pasture grass). The pond and nursery are swapped for two acres of highly consumptive irrigation with this package deal.

Draft transfer approval does not include volume for residual irrigation in the ditch company service area. This is the same method used in Transfer 70262 for the Eagle River project. Obviously, the 3 cfs in 63-264 cannot supply full volume to the 733.9 pre-transfer acres. The convenience of using a single ditch company right for the transfer implies full volume under all company rights for the acres to be retired. Allow a full volume of 9 af for two retired acres to be reconfigured for mitigation use in the Fease scenario.

The transfer originally listed water right 63-189 in the pre-parallel processing mode where the current SRBA record was not necessarily involved. Right 63-189 covered the local area and was an appropriate choice at that time. Later in processing, the decreed right was replaced with the current SRBA record at that time, claim 63-264 (combined claim that incorporates water right 63-189). Sometime after that replacement activity, a SRBA recommendation replaced the claim as the current record.

Transfer data entry screens list SRBA recommendation 63-264 as the affected record. But the Query check shows that the claim, not the recommendation, is actually affected by the transfer at this time. By the time Western coordinates parallel processing with the State Office, the transfer will act on the recommendation instead of the claim. The large P/U shape will also have been linked to P/U data.

✓
Now
completed
1/10/05

As in Transfer 70262 for the Eagle River project, associated ditch company rights for the same service area are not included in Transfer 66706. It is assumed that all the ditch company records will ultimately list the same total acres within the company service area by the time of the SRBA Director's Report.

Conditions of Approval

The draft approval for the **transfer** lists the necessary conditions. These mimic conditions in Transfer 70262. A slight difference here is that mitigation covers pond evaporation plus minor commercial use for Fease's nursery.

Permit approval should include the following:

Standard conditions.

Proof due in 1 year.

Does not authorize any new development (includes diversions and place of use).

Water bearing zone from 1 to 100 feet.

Remains subject to watermaster control in the future (measuring devices and controllable diversion works for the pond are not required now).

Remains subject to annual measurement and reporting in the future.

Retain ownership of two shares in the Ballentyne Ditch Company Ltd. for lands being removed from irrigation under Transfer 66706. Use of these shares elsewhere is prohibited, and any action to remove the shares from the property is also prohibited. Failure to comply with this condition is cause to cancel this right.

Subject to being cancelled in part or in whole if these uses are replaced with an earlier priority right from the same source(s) now pending in the SRBA (specifically, claim 63-30485 for the same artesian well).

The next page summarizes recommended approvals for both applications.

RECOMMENDED APPROVALS

TRANSFER 66706 FOR 63-264

<u>USE</u>	<u>PERIOD</u>	<u>CFS</u>	<u>AF</u>
Irrigation	3/1-11/15	2.96	undefined
Ground water recharge	same	0.04	9.0 ¹
TOTAL		3.00	undefined

APPLICATION 63-12459

<u>USE</u>	<u>PERIOD</u>	<u>CFS</u>	<u>AF</u>
Diversion to storage	1/1-12/31	0.04	undefined
Recreation storage	same	n/a	11.0
Aesthetic storage	same	n/a	11.0
Commerical storage	same	n/a	04.5
Commercial from storage	same	n/a	04.5
TOTAL		0.04	11.0

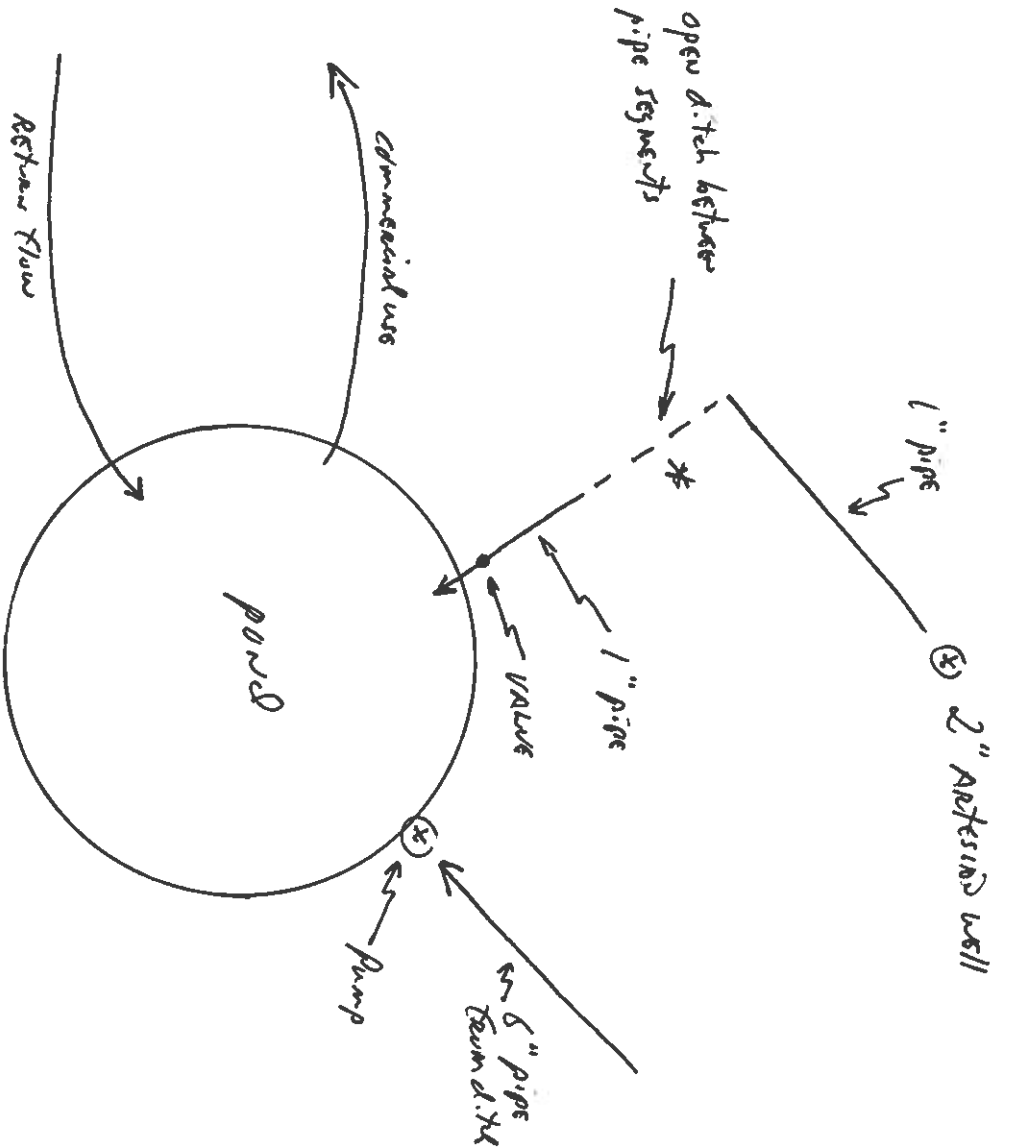
¹ Diversion volume of 9 af will be used to mitigate 63-12459: 4.5 af for pond evaporation from 1 acre of surface area (3.5 af consumptive use), plus 4.5 af for commercial use from the pond for the nursery (probably less than 3.5 af consumptive use based on the nursery system).

T. 66706 & 63-12459
Reuse Memo ATTACHMENT

NURSERY AREA

- greenhouses
- open air containers
- drip systems
- low pressure sprinklers
- in previous water for
Return flow for
Reuse

- Shallow ground water - 7-11' pond
- Artesian well - maintain pond
(.04 cfs / 2500 gpd limit)
- can run ditch shares to pond if
needed



* estimated 10-15 gpm @ ditch
 8/19/97