

MEMORANDUM

TO: Transfer No. 75674 File

FROM: Angela Grimm

DATE: July 15, 2009 Amended August 3, 2009

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes to change the place of use and ownership of right 63-33146 to resolve an objection to this right currently pending in the SRBA.

The transfer will provide primary irrigation water within a permissible place of use for the applicant's property generally located on the east side of Sabin Rd approximately 0.75 miles northeast of the intersection of Sabin and Burden Rd northeasterly of the Black Canyon Canal approximately 3 miles northeast of Parma.

Contact person for the applicant is Dana L. Hofstetter, Hofstetter Law Office LLC.

Summary of Information Submitted

Authority to File: A Quitclaim Deed conveying the entire right from the current owner of record John R. Lindley to the transfer applicant Troost Family Living Trust was submitted with the transfer application. The applicant also submitted a Warranty Deed documenting ownership of the proposed P/U. The applicant has authority to change the right.

Water Right Validity: Right is presumed to be valid based on pending SRBA recommendation. The recommendation has been objected to. However, this transfer is one action required in the Release and Settlement Agreement established between the parties involved to resolve the objection.

Injury to Other Water Rights: Injury should not occur. The applicant does not propose any changes to the P/D or quantity previously diverted from the P/D. As a ground water right, use of the P/D is subject to reasonable pumping level provisions of I. C. § 42-226.

Enlargement of Use: The applicant does not propose to enlarge the use. The transfer will not result in an increase in diversion rate and the number of acres irrigated will be limited to 24 acres originally authorized within the proposed 53 acre PPU. The right proposed for transfer has been confirmed to be a primary irrigation right, despite the current adjudication recommendation condition W14 stating the right is combined with Black Canyon Irrigation District water. It appears, based on the original parent right (63-

8700) application for permit, the intent of the permit was to supply supplemental irrigation water to lands south (southwest) of Black Canyon Irrigation District's D-Line canal and primary irrigation water north (northeast) of the D-Line canal. The beneficial use field exam conducted for the licensing of 63-8700 indicated the well supplements irrigation in areas covered by Black Canyon Irrigation District shares, but doesn't not specifically state the well is used for primary irrigation of the P/U north/northeast of the D-Line canal. Black Canyon Irrigation District confirmed the area north of the D-Line canal in the SW NE and NE NW Sec 1 T5N R5W is not irrigated with Black Canyon Irrigation District shares. It is reasonable to conclude that right 63-33146 is a primary ground water right. Therefore, the transfer proposes changing the P/U of a primary irrigation groundwater right to a PPU where it will remain a primary irrigation right, which will not be an enlargement. Condition W14 will not be recommended as a condition for this right in the transfer approval, because it appears this condition was carried over from the parent right(s) in error.

Local Public Interest: Authorizing the applicant to irrigate within a PPU adjacent to the current P/U from the same P/D to resolve an SRBA objection 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.

Discussion

The water right record proposed for transfer resulted from two change of ownership splits of parent right 63-8700. Data entry for this transfer will affect the adjudication record of 65-33146 still pending in the SRBA. An objection was filed to the right as recommended. This transfer is one of several conditions of the Release and Settlement Agreement entered into by the parties involved, copy of agreement attached to transfer application.

Rights 63-9110, 63-33041, and 63-33145 have the same P/D as the right proposed for transfer 63-33146. These rights have different P/Us. Right 63-33146, upon transfer approval, will be conditioned accordingly. There are no other overlapping water rights than those mentioned above.

The Quitclaim Deed conveying ownership of the water right, attached to the transfer application, is not signed. A letter was sent to the applicant's representative requesting a signed copy of this deed or a credible explanation as to why it has not been signed. The applicant's representative supplied a detailed explanation of terms within the Release and Settlement Agreement (Attachment 3 to transfer application) stipulating the deed will remain in escrow until this transfer is approved and the right(s) involved in the agreement

are decreed in the SRBA. An unsigned Quitclaim Deed is not an official ownership document per Department policy, however previous transfer approvals have changed ownership of rights based on the idea that conveyance of ownership is dependent upon transfer approval with limited other contingencies. Considering execution of the deed conveying ownership is dependent upon the transfer approval and all the terms of the ownership change have been agreed upon in the signed Release and Settlement agreement the transfer approval has been drafted to put right 63-33146 into the name of the applicant.

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 n/a since a new well is not proposed.