

MEMORANDUM

TO: Application for Permit No. 63-31415 & Transfer No. 75023 Files

FROM: Angie Grimm

DATE: December 1, 2008 Amended April 6, 2009

RE: Evaluation of Sufficiency of Information Submitted

Application for Permit 63-31415 was filed by the Idaho Department of Parks & Recreation (IDPR) to cover initial fill for a 4.5 acre portion of an excavated pond at the newest entrance of Eagle Island State Park. The proposed source for the pond is shallow ground water tributary to the Boise River above Star. The Ballentyne Ditch Co LTD (Ballentyne Ditch Co) filed accompanying Transfer No. 75023 to change the nature of use for the amount of water associated with a 4.5 acre irrigation portion of right 63-31808 to ground water recharge to mitigate consumptive use associated with the pond. Ballentyne Ditch Co provides irrigation shares to IDPR for irrigation of Eagle Island State Park. The shares associated with irrigation of the 4.5 acre portion of the pond's surface area will be delivered to the pond and remain in the pond for ground water recharge. The proposed transfer is similar in nature to transfer no. 70262. The transfer approval has been drafted to limit the annual volume for ground water recharge to the consumptive volume previously associated with irrigation of 4.5 acres. See Discussion section of this memo for further explanation.

The Eagle Island State Park entrance is located south of Highway 44, 7/8ths of a mile east of the intersection of Highway 44 and Linder Rd just over 2 miles west of Eagle. The current service area of Ballentyne Ditch Co associated with the right proposed for transfer is generally located north and south of Highway 44 approximately 1.5 miles to 3.25 miles west of Eagle. The P/D for right 63-31808 is located on the Boise River approximately one mile southeast of Eagle. The P/U and P/D for the Ballentyne Ditch Co will not change as a result of this transfer.

Contact person for the applications is Ron Howerton or Mary Lucachick at IDPR.

Summary of Information Submitted for Transfer 75023

Authority to File: The applicant, Ballentyne Ditch Co. LTD, is the current owner on record. The applicant has authority to change its own right. The associated rights affected by this transfer are also owned by the applicant. The applicant is authorized to do business in the State of Idaho as they are registered with Idaho Secretary of State under Organizational ID C6910.

Water Right Validity: The right is presumed to be valid, because the partial decree was issued on 12/10/2007 within the past five year period.

Injury to Other Water Rights: No injury has occurred nor should occur as there will be no change to the current amount of water being diverted or the method used to divert the water to the affected land. Water historically diverted for irrigation will continue to be diverted. When water is available, IDPR will divert all the water associated with their current shares to the pond. The water associated with the land to be irrigated, minus the 4.5 acre pond surface area, will be pulled out of the pond and rediverted within the limits of the 24-hour pond rule. There will be no reduction in quantity of water available for other water rights. The water right holder will not be put to any unreasonable effort or expense to divert the water since diversion practices will remain unchanged except the water previously applied to a crop will now be placed in a pond at the same location. Water quality may be enhanced by taking out cultivated acreage and replacing it with the pond and nearby wetland area.

Enlargement of Use: The applicant does not propose to enlarge the use. There will be no increase in the diversion rate, extent of beneficial use, the number of acres irrigated, or season of use as a result of the transfer. Historically, previous irrigation of the 4.5 acres was highly consumptive per applicant's remarks. This allows for a "1:1 pond swap".

Local Public Interest: Transfer proposes mitigation for an aesthetic and wildlife pond providing for wildlife habitat in a state park. Changing the nature of use for 4.5 acres of irrigation is minimal and will not significantly impact the local agricultural base. Use of the same amount of water for ground water recharge instead of irrigation on public land for a state park 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.

Summary of Information Submitted for Application 63-31415

The application was complete and included an attachment (Attachment A) of narrative remarks outlining the history of this project and the proposal for mitigation of the consumptive losses associated with the pond. The application proposes aesthetic and wildlife storage for a 71 AF (4.5 ac surface area) portion of the larger 108 AF (6.2 ac surface area) pond. The 71 AF portion is on IDPR land while the remaining 37 AF portion is on private property currently owned by Rose Cottage LLC. Rose Cottage LLC also has shares from Ballentyne Ditch Co for irrigation of the 1.7 ac surface area of the pond; however they have not filed the appropriate applications for water right authorization for their portion of the pond to date. The applicant's representative has spoken with Rose Cottage LLC to try and encourage the entity to jointly or individually

file for water right approval. Rose Cottage LLC was not willing to file jointly at this time. Upon application approval, the regional office will follow up with Rose Cottage LLC recommending they file for the applicable water right approvals to avoid potential legal issues.

The application indicates the excavated pond fills with shallow ground water, from 1 ft to approximately 30 ft, which is tributary to the Boise River. This use is subject to Watermaster control due to the use of shallow ground water tributary to the Boise River. As such, a request for comments on this proposal will be sent to the Watermaster of Basin 63.

The application proposes aesthetic and wildlife storage for a year round period of use. The transfer application proposes mitigation for this use during the irrigation season. A de minimus amount of consumptive use due to evaporative losses will occur during the non-irrigation season.

The application was submitted with the applicable \$120.00 (receipt W025991) on 12/16/99 when the previous fee schedule was still applicable. The amended application received 8/11/08 did not increase the quantity requested.

Discussion

Transfer application 75203 proposes to change the nature of use for a 4.5 acre portion of irrigation use to ground water recharge. This change is proposed as a “1:1 pond swap”. Shares of Ballentyne Ditch Co water will be placed in the un-lined pond for ground water recharge to mitigate the year round consumptive use of the pond. The transfer will affect the water right record of 63-31808, which is the most current record for this right. The partial decree was issued and the results were migrated prior to the transfer filing.

Recent guidelines for transfer and mitigation application processing establish a nature of use change from an existing use to ground water recharge is approvable if the proposed pond is not lined. The proposed pond is unlined per discussion with applicant’s representative during an office visit. Guidelines also establish the volume of water changed to ground water recharge shall be limited to the annual consumptive volume if the water placed in the pond is not diverted out of the pond. The proposed uses in these applications do not include diversion from storage; however IDPR does propose to divert water within the constraints of the “24-hr rule” from the pond for irrigation purposes. Transfer no. 70262 approval changed the nature of use for a portion of right 63-31808 from irrigation to ground water recharge for a “1:1 pond swap”. Condition number 2 of that transfer approval limits the annual volume for ground water recharge to the consumptive volume associated with the previous irrigation practices.

Right 63-31808 resulted from the combination of several rights during the SRBA. Stewart Decreed Right 63-237 was one of these rights. It was specifically associated with the land now owned by IDPR and Rose Cottage LLC where the pond is located.

That is why 63-31808 has been chosen for the proposed nature of use change. The P/D and P/U for other Ballentyne Ditch Co rights will not be affected by this transfer. However, the other Ballentyne Ditch Co rights need to be included in the transfer process as associated rights, because this transfer, if approved, will reduce the total number of irrigated acres authorized from 741 acres to 736.5 acres within the service area. The associated rights are 63-195, 63-198AA, 63-258A, 63-260B, 63-264, and 63-285. There are no other overlapping rights affected by this transfer.

Previous transfer processing (Transfer no. 70262) changed the nature of use for a portion of irrigated acres to ground water recharge for mitigation of ponds authorized under Permit 63-12598. Transfer documentation indicates approval of this transfer should have reduced the number of acres authorized for irrigation from the 741 acres initially recommended to 733.9 acres as a result of the change in nature of use to ground water recharge for mitigation purposes. The suggested reduction was not carried over into the final recommendation and partial decree issued for right 63-31808. Documentation in the adjudication file(s) indicates the recommendation was amended after transfer 70262 was approved, but a notice of error was submitted by representatives of the Ballentyne Ditch Co. It appears the recommendation was amended to revert to the previously authorized 741 acres. The reason for this decision is unclear from the file, however based on the record of events it appears the final recommendation for 741 acres did not result from oversight with regard to the affect of transfer 70262 on the right, but rather a conscious decision on the part of Department staff. With this under consideration and the fact that the partial decree has been issued for this right, the proposal for reduction from 741 irrigated acres allowed to 736.5 acres under this transfer appears correct.

As mentioned above, the right proposed for transfer (63-31808) is being used to mitigate the consumptive use of the pond proposed under permit application 63-31415. Right 63-31808 is a Boise River source right with a priority date of 06/01/1888. The priority date along with special conditions regarding delivery of this right ensures this right is almost always deliverable and thus a good candidate for use as mitigation for another use requiring such.

The transfer application was submitted 8/11/08 with \$50.00 (receipt W036812) and a request to apply \$50.00 submitted with application for permit 63-31414 (receipt W025991) that was withdrawn. The \$100.00 received for the transfer application is appropriate for the quantity of water proposed for change (0.06 cfs) under right 63-31808.

Summary

Assuming protests are not filed and/or other information does not contradict the above analysis, the applications can be approved as reflected by the draft approvals. The draft approval for the transfer contains the recommended conditions, which mimic conditions used for transfers similar in nature, such as transfer 70262.