

MEMORANDUM

TO: Transfer No. 75226 File

FROM: Angela Grimm

DATE: March 5, 2009 Amended March 24, 2009

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes to retire a portion of two primary irrigation rights and convert the use to stockwater and commercial use for practices at the proposed Rockridge Dairy. The applicant proposes to drill two new wells for the proposed dairy while maintaining the two existing wells for the irrigation system. The applicant intends to maintain two separate systems. The rights will be split accordingly, two rights for the irrigation system (51-13060 and 51-13062) and two rights for the dairy system (51-13061 and 51-13063).

The 62.9 acres of retired irrigation land along with the remaining acres proposed for irrigation, commercial and stockwater use are approximately 1 mile west of the intersection of Balanced Rock and Castleford Glenns Ferry Rds, north and south of Balanced Rock Rd, approximately 2 miles east of the Twin Falls and Owyhee Co. line and 7 miles north west of Castleford. The irrigated land to be retired, the P/Ds, and P/U are all within the Blue Gulch CGWA.

Contact person for the applicant is Greg Sullivan, Brockway Engineering PLLC.

Summary of Information Submitted

Authority to File: Department records indicate the water rights proposed for transfer are currently owned by the applicant. The applicant has authority to change the rights.

Water Right Validity: Rights are presumed to be valid, because the partial decrees were issued on 10/30/2007 within the past five year period.

Injury to Other Water Rights: No injury should occur provided the drilling and use of the wells does not interfere with nearby existing wells. As ground water rights, the proposed P/Ds' use is subject to reasonable pumping level provisions of Idaho Code 42-226. According to applicant's representative comments via phone conversation 3/4/09 and the application, the proposed P/Ds are approximately 0.5 miles south of and completed in the same aquifer and production zone as the original P/Ds. All four P/Ds (two existing irrigation wells and two proposed dairy wells) are within the Blue Gulch CGWA. The nearest domestic well is within 0.5 miles of the P/Ds. This well appears to be completed into the same aquifer production zone as the right P/Ds within the CGWA. It is unlikely use of the P/Ds for the rights proposed for transfer will affect spring use

considering the well production zone is part of the deeper regional aquifer system while any springs' source is likely to be a shallower aquifer zone. It is unlikely the changes proposed will significantly impact the ground water supply for other water rights in this area considering the proposed P/Ds are to be completed in the same production zone within the CGWA as the current P/Ds and no enlargement of the rights is proposed.

Enlargement of Use: The applicant does not propose to enlarge the use. There will be no increase in diversion rate, annual diversion volume or number of acres irrigated as a result of this transfer. 62.9 acres previously irrigated will be retired and the historic consumptive volume associated with the irrigation of the retired acres, 3.02 AF/AC based on credible information provided by the applicant, will be used for the proposed stockwater and commercial uses. The applicant proposes to retire a portion of two primary irrigation rights in a combined system where the rights are not staked. The proposed increase in the period of use is allowable for this ground water use, because the diversion rate, annual diversion volume, and annual consumptive volume are not increasing. The stockwater and commercial use for the proposed dairy is considered fully consumptive.

Local Public Interest: Development of the proposed dairy will allow for a potential increase in local employment and local economic revenue with a minimal impact to the agricultural base of the local area. Processing of this transfer application will fulfill one of the requirements of the dairy's already procured CAFO permit allowing for commencement of construction serving the local public interest.

Beneficial Use/Conservation of Water Resources: The application proposes beneficial uses 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 records proposed for change were decreed 10/30/2007. The records were migrated to water right records. Data entry for this transfer will affect the water right records. There are no overlapping rights for the proposed P/U or P/Ds.

The applicant proposes to retire a total of 62.9 acres of irrigated land, 29.8 acres from right 51-13003 and 33.1 acres from right 51-13004. The 29.8 acres to be retired from 51-13003 have an associated diversion rate of 0.34 cfs $[(2.48 \text{ cfs}/219 \text{ AC}) \times 29.8 \text{ AC}]$ and annual diversion volume of 119.2 AF $[(876 \text{ AF}/219 \text{ AC}) \times 29.8 \text{ AC}]$. The 33.1 acres to be retired from 51-13004 have an associated diversion rate of 0.29 cfs $[(2.18 \text{ cfs}/245.4 \text{ AC}) \times 33.1 \text{ AC}]$ and annual diversion volume of 132.5 AF $[(982 \text{ AF}/245.4 \text{ AC}) \times 33.1 \text{ AC}]$. The 62.9 acres to be retired, from the combined system of the two water rights, have an associated annual diversion volume of 251.6 AF $[(1,856 \text{ AF}/464 \text{ AC}) \times 62.9 \text{ AC}]$.

The transfer proposes to change the historic consumptive volume associated with the irrigation of the retired acres to stockwater and commercial use. Information submitted with the application indicates in the previous 5 year period the former owner irrigated pasture grass. The applicant's representative states the consumptive irrigation requirement for pasture grass near Castleford is 3.02 AF/AC. For the 62.9 acres proposed to be retired, the total consumptive volume is 190 AFA (90 AF from 51-13003 and 100 AF from 51-13004). The applicant proposes to transfer the historical consumptive use of 190 AFA for stockwater and commercial use at the proposed Rockridge Dairy. The applicant incorrectly described the volume remaining for irrigation on the application. It appears the applicant subtracted the consumptive volume (190 AF total) transferred rather than the associated diversion volume (251.6 AF total) of the retired acres. The applicant was not required to amend the application, because the Department has the discretion to approve an application for less than the applicant requests.

This application for transfer (No. 75226) was submitted to replace an application for transfer (No. 73839) filed by Brockway Engineering on behalf of the previous owner (John W. Peterson). The previous transfer was withdrawn 10/9/08. The fee submitted by Brockway Engineering for the previous transfer has been applied to this transfer application per Brockway Engineering's request.

The application was amended 1/30/08 per my letter dated 1/22/09. In his letter dated 1/29/09, the applicant's representative indicated that the dairy footprint identified in the original application has been removed from the application, because the applicant is uncertain which lands currently irrigated will be associated with the dairy footprint (approximately 93.1 acres in addition to the 62.9 acres identified for retirement). The letter states the applicant is aware that the portions of the water rights not used for irrigation of the approximate 93.1 acres within a 5 year period are subject to forfeiture. Once it is determined where the dairy footprint will be, the applicant intends to transfer the estimated 93.1 acres worth of irrigation rights associated with the land or place them in the water bank. The 62.9 acres to be retired for the proposed nature of use change is clearly delineated on the map and elsewhere on the amended application. The applicant incorrectly described the irrigation to be retired (Part 2 B No. 3 for both rights) and the irrigation remaining (Part 1 B No. 5). On 3/23/09 an email was sent to the applicant's representative in order to confirm which acres are to be retired and which acres will remain irrigated. On 3/24/09, the applicant's representative confirmed the correct acreage to be retired and to remain irrigated. I did not require the applicant to amend the application, because the email confirmation, the correct information on certain parts of the application, and the map provided with the application is sufficient evidence to determine the applicant's intent. The specified 62.9 acre area will be removed from the place of use for the irrigation rights (61-13060 and 61-13062). Subsequently, the number of acres authorized for irrigation under the combined system of rights will be reduced from 464 acres to 401.1 acres. The place of use shape for the dairy (61-13061 and 61-13063) will be drafted as it appears on the map provided with the application.

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.