

## MEMORANDUM

TO: Transfer No. 74360 File

FROM: Steve Lester

DATE: March 20, 2009

RE: Evaluation of Sufficiency of Information Submitted

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The transfer proposes to move an entire 5 acre right from the Kuna area to the Boise Foothills near Table Rock just above the old penitentiary by Warm Springs Avenue.

This right originated as a portion of the “Mellin right” 63-7194. The Mellin right was split many times for different transfers, mitigation plans and/or ownership changes. The application portion of the parent right was decreed as 63-32894 in May 2008.

**Contact person for the applicant is attorney Dana Hofstetter.**

### **Deviations from Transfer Policy Standards**

The application lists the proposed P/D to a 10-acre tract. The application maps show the well on/near the line between NWSESE and SWSESE. Due to this uncertainty, the approval should list the 40-acre tract. A database comment and the shape file serve to document the proposed P/D on/near the 10-acre line.

The 2005 application was held due to SRBA issues and the related transfer delay. During that period, the attorney requested at least a legal notice to see if any protests might occur. SO administration determined “preliminary processing” could occur in late 2005-early 2006. This meant the application was advertised without any meaningful review, and the applicant assumed the risk of further review possibly resulting in republication. However, current review determined additional legal notice was not needed. All of this is documented in the file.

### **Summary of Information Submitted**

**Authority to File:** The decreed right is in the name of the applicant. The applicant owns the proposed P/U (Application Attachment B, reinforced by current tax lot information). The applicant can change this right. The updated address for the applicant, documented in the file and the decree, is acceptable without amending the application.

**Water Right Validity:** The right was valid during the application period based on SRBA work (after working through some objections by Mellin about some rate/volume

rounding in splits as the right was being marketed), resulting in a decreed right in May 2008. The right is valid.

**Injury to Other Water Rights:** Injury is not expected from this proposed use. See discussion section of this memo.

**Enlargement of Use:** Enlargement is not proposed by continued irrigation within the limits of the right.

**Local Public Interest:** The proposed use appears to serve the public interest.

**Beneficial Use/Conservation of Water Resources:** The application 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 approval of the application.**

### **Discussion**

The existing right is a primary irrigation right without any overlap. The proposed site does not include any P/D or P/U overlap. The proposed well is an existing domestic well for which the drilling permit fee upgrade was fully paid.

The domestic well intercepts shallow ground water in a perched aquifer apparently not tributary to the Boise River. This is documented in the SPF 8/25/08 letter/report. I discussed this information with SO Hydrology staff. Staff agreed that the SPF report makes a reasonable case.

The existing right covers moderately deep ground water near Kuna. The proposed use includes shallow ground water upstream from Star but apparently not in communication with the river. It is possible that the existing and proposed sites do not include the same aquifer source. However, the real water right limitation is shallow ground water tributary to the river. The applicant should not be penalized for moving from a moderately deep aquifer area to a shallower one within the same basin provided senior rights associated with the river upstream from Star are not injured.

The irrigation proposed in the application has been in place for at least several years without any complaints noted by the department. The legal notice did not result in any protests. Two or three nearby wells that are similar to the applicant well apparently have not been injured by this ongoing situation.

The proposed site is within the Boise Front GWMA. The well involves cold water considerably less than 300 feet deep. GWMA issues are not involved.

The weight of the evidence supports application approval.

However, the following condition of approval is suggested to prevent injury to senior right associated with the Boise River:

This right authorizes diversion from an existing well for shallow ground water that is not considered tributary to the Boise River. This right does not authorize construction of a new well, or enlargement or deepening of the existing well, that would intercept shallow ground water considered tributary to the Boise River.

Condition 046 is not needed for an existing well.