

MEMORANDUM

TO: Transfer No. 74508 File

FROM: Angela Grimm

DATE: February 18, 2009

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes to retire $\frac{1}{2}$ acre of irrigation (0.01 cfs) and change the nature of use to aesthetic to mitigate for the evaporative losses associated with the aesthetic channels authorized under water right permit 63-31878 (Bown Crossing LLC) in Riverwalk Subdivision. The transfer has been filed to comply with a condition of approval of permit 63-31878.

Riverwalk Subdivision, where the $\frac{1}{2}$ acre of retired irrigation land and associated aesthetic use occurs, is located north of Boise Ave between Maze Ave and E Bergeson/S Parkriver Dr approximately $1\frac{3}{4}$ miles downstream of Barber Dam in east Boise.

Contact person for the applicant is Mike Creamer, Givens Pursley LLP.

Summary of Information Submitted

Authority to File: The applicant is the owner on record of the right proposed for transfer. The water right owner has the authority to change the right.

Water Right Validity: Right presumed to be valid based on the pending SRBA recommendation. The SRBA objection period is over and objections were not filed.

Injury to Other Water Rights: Injury should not occur as there will be no change to the amount of water diverted or the method used to divert the water to the Riverwalk Subdivision. Water historically diverted for irrigation will continue to be diverted to Loggers Creek, but will remain in Loggers Creek to flow back to the Boise River, rather than being diverted from Loggers Creek into Riverwalk Subdivisions diversion works. 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 diverted from Loggers Creek for the $\frac{1}{2}$ acre for irrigation will remain in Loggers Creek.

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. ½ acre previously irrigated will be retired to allow for 0.01 cfs to be diverted for aesthetic use to mitigate the consumptive use associated with the aesthetic channels authorized under permit 63-31878.

Local Public Interest: The transfer application has been filled to fulfill a condition of permit 63-31878. Complying with IDWR regulations serves the local public interest. Reduction of ½ acre of irrigation to mitigate for evaporative losses associated with aesthetic water channels will not negatively or significantly impact the local agricultural base, employment, or any other local economic activity.

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

Processing of this transfer and associated data entry will affect the adjudication claim/recommendation record of water right 63-185B. This right has not been decreed in the SRBA, but was not objected to during the objection period.

Rights 63-148C, 63-149A, 63-150, 63-164C, 63-185A, 63-2392C, 63-2392D, and 63-9386B share the same point of diversion as the right proposed for transfer (63-185B). Permit 63-31878 (Bown Crossing LLC) also shares the same P/D. These rights do not need to be part of the transfer application, because the application does not propose a change to the P/D. Right 63-185B is one of five surface water irrigation rights associated with the applicant's service area. The P/U for other South Boise Water Company rights will not be affected by this transfer. However, the other 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 871.78 acres to 871.28 acres within the service area. The associated rights for the large P/U service area are 63-148C, 63-150, and 63-2392C. There are no other overlapping rights affected by this transfer.

Permit 63-31878 (Bown Crossing LLC) authorizes year round aesthetic use. The year round evaporative loss associated with the aesthetic channels was estimated to be 0.0008 cfs, with 0.00005 cfs occurring during the non-irrigation season, per application for permit hearing documentation. Parties involved in processing of the permit determined transfer of 0.01 cfs associated with irrigation of ½ acre would be sufficient to mitigate for evaporative losses associated with the new use. The transfer application proposes mitigation for the aesthetic use only during the irrigation season. The amount of consumptive use due to evaporative losses that will occur during the non-irrigation season is considered de minimus.

Right 63-185B is a Boise River source right with a priority date of 06/01/1871. 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.

The Department informed the transfer applicant, via a phone conversation, of three items that were addressed internally versus requiring amendments to the application itself.

These items are as follows:

1. The transfer application as drafted proposes to change the nature of use from irrigation to mitigation. Per Department policy, the nature of use will be changed from irrigation to aesthetic use, because it is the evaporative losses associated with an aesthetic use that is being mitigated by the retirement of previously irrigated acres.
2. During a meeting with the applicant's representative (for this application), who is also the attorney for the permit owner of 63-31878, it was established that South Boise Water Company will divert the 0.01 cfs proposed for transfer from the Boise River to Logger's Creek. The 0.01 cfs will remain in Logger's Creek to return back to the Boise River, i.e. the permit holder Bown Crossing LLC will not divert the 0.01 cfs through the diversion works of the Riverwalk Subdivision.
3. The P/U for the aesthetic portion of 63-185B (mitigation water) will be 3N 3E Sec 19 SW SW (Gov't Lot 6), where water is diverted under permit 63-31878 from Logger's Creek, because this is location where the mitigation water is accounted for.

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.