

MEMORANDUM

TO: Transfer No. 73817 File

FROM: Vicky Music

DATE: September 19, 2008

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes a transfer to five rights, four of the rights from a groundwater source and the fifth right, a Dry Creek source. The transfer would add and change points of diversion to create a pressurized irrigation system for a future residential development, the Dry Creek Ranch Planned Community. Additionally, the transfer seeks to convert the 392- acre place of use to 392 irrigated acres within a 739-acres permissible place of use. The rights proposed to be transferred are 63-2535, 63-4023B, 63-4086B, 63-7123 and 63-17454 (Dry Creek source).

The site is located in the Boise foothills, approximately 6 miles northwest of the Boise city center and 3.5 miles northeast of the City of Eagle. Specifically, the site is in the Dry Creek Valley. Horseshoe Bend Rd. bounds the site on the west.

Contact person for the applicant is consultant Terry Scanlan, SPF Water Engineering, LLC.

Deviations from Transfer Policy Standards

There are deviations from policy in the application, described herein. The deviations have been corrected and should not delay transfer processing.

In Part 1(B) (1), there is a stockwater use associated with right no. 63-4023B and a domestic use associated with right no. 63-2535, both de minimus, that are proposed to be transferred. However, the uses are not described in Part 1(B) (5), the place of use description, or elsewhere in the application. The applicant's intention regarding these uses is not clear.

I contacted Terry Scanlan regarding these uses and received an e-mail from him in response. Terry stated that at the present, the applicant intends for the uses to continue to be associated with the places of use on which they have been historically used. Terry's response is in the file. This omission has been rectified and should not delay transfer processing.

The applicant states in Part 1(B) (2), that the annual volume being transferred is 4198.5 acre-feet per annum. Though this is the total of the volumes on the individual rights, the total volume will be limited to 393 acres x 4.5 af = 1764 acre-feet per annum. This omission can be corrected in the transfer approval and should not delay transfer processing.

Also in Part 1(B) (2), the applicant lists the total amount of water to be transferred as, "...11.19 (not to exceed 7.84 cfs/1864 afa in combination for 392 acres...". The fee paid was based on the quantity of 7.84 cfs, the combined limit, and not the 11.19 cfs, which is the total quantity of each right when added individually. Though the applicant did not specify anywhere in the application that they were basing the fee paid on the combined limits, it is reasonable and inferable, and should not delay transfer processing.

The applicant did not answer Part 1(6) (a) on page 2, regarding whether the property was subject to liens, etc. I contacted the consultant and the applicant sent in a corrected page 2 and a statement from the instrument holder. This deviation has been remedied.

In Part 2(A)(10) for each of the rights, the applicant answered "yes" to whether any portion of the water right had undergone five years of non-use. The applicant explained further that each of the water rights were protected from forfeiture due to the status of the rights in the SRBA and the approved extensions for time to avoid forfeiture. (Applications For Extension of Time to Avoid Forfeiture of A Water Right were filed in 1999 for each of these rights and the extension stated that use of the rights had to resume by 11/1/2004.)

It is true that findings of forfeiture are tolled for an active claim in the SRBA. So, even though the extension stated that use had to resume by 11/1/2004, the claims were still active and forfeiture was tolled until the claims were decreed by the SRBA Court on 4/11/2007, at which time the forfeiture clock began again. Therefore, the transfer application can be processed.

The application should have included enlargement claim 63-32266 which lies in the proposed permissible place of use. This claim was submitted in 2006 and was not recommended in the Basin 63, Part 2 Director's Report as were the other claims. It was recommended in the Basin 63, Part 3 Director's Report and has not been partially decreed by the SRBA Court. I contacted applicant's consultant, Terry Scanlan, regarding adding this claim to the transfer. He said they presently did not want to amend the application to include the enlargement claim. I told him IDWR would not require the application be amended to include the enlargement claim, but we would condition the transfer approval with combined use remarks to include the claim.

Summary of Information Submitted

Authority to File: The applicant previously filed a change of ownership with IDWR and submitted deeds proving ownership. Hence, the current IDWR records for these rights are in the name of the applicant.

Water Right Validity: The rights are valid because the partial decree was issued on 4/11/2007, within the past five year period.

Injury to Other Water Rights: Moving the Dry Creek point of diversion upstream from Section 35 to Section 36 will not injure other rights because there are not other Dry Creek diversions from this stretch of the creek. It is all owned by the applicant.

There are approximately 40 Dry Creek water users. The applicant is junior in priority to all but 2 of these. There are several senior users downstream of the applicant; however, the applicant's rights have been used for approximately 70 years on the place of use. Therefore, injury to other rights is not expected.

Enlargement of Use: The transfer application does not propose enlargement of the rights.

Local Public Interest: At the present, there are no known public interest issues as defined by IDWR administrative policy.

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.

Additional Information &/or Analysis and Discussion

No additional information from the applicant nor additional IDWR analysis needed.

The place of use is located in the Basin 63, Boise River Water District. A letter will be sent to the Watermaster, soliciting his comments.

Because the Dry Creek Rural Neighborhood Association protested the overlapping municipal application, the Western Region Manager has requested that the Association be notified when this application is advertised.

The SRBA status has been summarized in the *Summary of Information Submitted -Water Right Validity* section of this memo.

There is an overlapping enlargement claim, 63-32266 . The claim has not been decreed by the SRBA Court. However, no objection was filed and I expect the SRBA Court will issue a decree for the claim as recommended. If the transfer is approved, a combined use condition should be included that limits all the rights: 63-2535, 63-4023B, 63-4086B, 63-17454 (Dry Creek source), 63-7123 and the enlargement right, 63-32266, to 7.84 cfs, 1764 are-feet/annum for the irrigation of 404 acres.

The applicant's municipal application (63-32423) has been protested by the Dry Creek Rural Neighborhood Association. The pretested application has tentatively been set for a hearing November 20-21, 2008, at the IDWR state office.

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 required because new well(s) are proposed.