

MEMORANDUM

TO: Transfer No. 73841 File

FROM: Angela Grimm

DATE: June 30, 2008 Revised August 11, 2008 & October 14, 2008

RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes a new point of diversion to supply water for irrigation under decreed water right 63-32329 (Poен Land Trust) resulting from the split of adjudication record 63-32159 into adjudication record 63-32328 (Craig) and 63-32329. Transfer, if approved, will accomplish a change of ownership for 63-32329 from Poен Land Trust to Neil E. and Deborah B. Moore.

The transfer will provide irrigation water for Moore's property at Esther Estates Subdivision Lot 3 Blk 1 (Parcel R2517270300), 2286 E. Poен Rd. generally located off Poен Rd between S Swan Falls Rd and S Cloverdale Rd southeast of Kuna.

Summary of Information Submitted

Authority to File: The original transfer applicant, Poен Land Trust, is the current owner of right 63-32329. Since filing of the transfer, Poен Land Trust sold the property with all appurtenances to Neil E. and Deborah B. Moore. The assignment of the transfer application, received 5/26/08 assigning the application from Poен Land Trust to Neil E. Moore, was accompanied by a special warranty deed documenting ownership. The owner of this right has authority to file the transfer application.

Water Right Validity: The right is presumed to be valid, because the partial decree was issued on 05/29/07 within the past five year period.

Injury to Other Water Rights: No injury should occur provided use of this well does not interfere with nearby existing wells. According to well log data on file with the Department and the transfer application, the proposed P/D, drilled for Norm Faltinson 6/13/96, is within one mile of and completed in the same aquifer and production zone as the original irrigation well under right 63-7340 drilled for Ernest Manson 4/21/74. It is unlikely this change to the POD will significantly impact the ground water supply for other water rights in this area.

Enlargement of Use: The applicant does not propose to enlarge the use. Standards call for the installation of measuring devices when the transfer authorizes one or more

changes to the diversion or use of ground water as this application does. 63-32329 authorizes irrigation of nine acres outside of a water measurement district which requires installation of a monitoring device upon request per Department standards.

Local Public Interest: Allowing the owner to use a new P/D approximately 0.5 mile from previous ground water P/D in any area with no known ground water supply concerns for agricultural/irrigation purposes 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.

Discussion

The water right record proposed for change resulted from the split of adjudication record 63-32159 (Craig) into this right, 63-32329 (Poen Land Trust), and 63-32328 (Craig). The partial decree for 63-32329 was issued 05/29/2007. The results have been migrated to water right records. The parent right for this series of splits is 63-7430. Other pending actions proposing additional splits of the parent right do not affect this application. This application does not propose a split; it proposes a new point of diversion for the whole right 63-32329.

The parent right for this series of splits, 63-7430, was first split into 63-7430A and 63-7430B during licensing of the permit. The licenses for 63-7430A and 63-7430B were issued in the original permit owner's name, but to the property owners at the time, Beus and Craig respectively. License examination of these rights along with 63-7426 concluded these rights share one point of diversion used for irrigation licensed for 12.42 cfs, but having a system capacity of only 11.15 cfs. The other P/D was used for the domestic portion of the water right. 63-7430B was claimed by Craig and split several times in the adjudication creating several rights with the same P/D for irrigation. Transfer 73893 split one of the resultant rights and added a point of diversion for right 63-32610. The associated rate of 0.16 cfs was deducted from the combined limit rate for the water rights. As of the time of this transfer, the following rights share the same P/D and have a combined limit of 10.99 cfs; 63-7426, 63-7430A, 63-7430D, 63-31321, 63-32322, 63-31744, 63-32117, 63-32118, 63-32119, 63-32329, 63-32335, 63-32617, and 63-32618. Based on system capacity limitations, the following illustrates the calculation of the diversion rate available to be transferred for this application:

Senior WR 63-7426 6.32 cfs
 Junior WR 63-7430A 3.00 cfs
 Junior WR 63-7430C 2.88 cfs (as decreed)
 Junior WR 63-7430D 0.20 cfs (as decreed)
 12.40 cfs originally limited to 11.15 cfs currently 10.99 cfs
 $12.40 \text{ cfs} - 11.15 \text{ cfs} = 1.25 \text{ cfs}$ licensed above capacity
 $6.08 \text{ cfs} - 1.25 \text{ cfs} = 4.83 \text{ cfs}$ remainder of system capacity licensed under original junior WRs
 0.18 cfs (requested for irrigation of 9 acres) * $4.83 \text{ cfs} / 6.08 \text{ cfs} = 0.14 \text{ cfs}$ available for transfer
 $10.99 \text{ cfs} - 0.14 \text{ cfs} = 10.85 \text{ cfs}$ will be new combined limit for associated rights

See attached split tree diagram for more details on splitting of this series of rights.

There are no active overlapping water rights for the place of use of 63-32329. The current P/Ds for 63-32329 have several overlapping water rights with different P/Us for irrigation of neighboring properties. The proposed P/D is a domestic well drilled for Norm Faltinson on 06/13/1996. The drilling permit upgrade fee was paid with the transfer application fee, receipt number W034311. There are no overlapping rights at the proposed P/D.

Ownership of the water right has changed since the transfer application was filed. The transfer has been assigned from the previous owner (Poen Land Trust) to one of the current property owners, Neil E. Moore. Thus, the transfer applicant has been recorded as Neil E. Moore, while the water right owners on record will be Neil E. and Deborah B. Moore as the deed information states. The application states the property is subject to liens, deeds of trust, mortgages, or contracts. Since ownership of the property and associated water right has changed since the transfer application was filed, this information may no longer be accurate. A letter was sent to the current applicant 06/20/2008 requesting a notarized statement from any lien, deed of trust, mortgage, or contract holder agreeing to the proposed changes. If the property is no longer subject to liens, deeds of trust, mortgages, or contracts, the applicant was asked to submit a statement to that effect. As of 07/21/2008, the Department has not received a response to this request. The transfer application proposes addition a point of diversion to the right authorizing the applicant to irrigate their property with their own well. This change would not presumably, negatively impact the property value. Thus, based on current Department understanding and procedures regarding requests for/requirement of lien holder approval on transfers, this transfer application may be processed and approved without a lien holder letter.

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.