

MEMORANDUM

TO: FILE
FROM: DANIEL A. NELSON
DATE: 3/8/2007

RE: F & M CATTLE INC TRANSFER, RIGHT 57-7392 (ALSO AMENDMENT FOR PERMIT 57-11630)

The transfer and amendment for permit proposes to change one of the three points of diversion to a new location approximately 1300 feet northeast of the original location within the same calf/heifer rearing facility. The transfer will also be used to correct the legal description of the feedlot. The two rights combined allow for 4600 head of dairy cattle or proportionate numbers of younger cattle. The facility is located approximately 1-½ miles east of Highway 78 on Reynolds Creek Road. The facility can also be described as being in the NENE Lot 1 and NWNE Lot 9 of section 24, township 1S range 3W, Owyhee County.

AUTHORITY TO FILE:

The applicant has filed a change of ownership and supplied all warranty deeds required to show ownership of the water rights and the land involved in the transfer and amendment.

WATER RIGHT VALIDITY:

This water right for the transfer was decreed in 1997, and the permit was approved in 2004. The 2004 aerial photo also shows the feedlot, along with multiple actions by department well drilling staff, shows that the feedlot is actively using the water rights involved in both the transfer and the amendment.

INJURY TO OTHER WATER RIGHTS:

The original application for permit did receive a late protest, however, we have not received any complaints or information to suggest that this use has injured any other rights after the permit was approved. Whereas this facility has been at or near full operation for at approximately 3 years, I can find no evidence of injury.

ENLARGEMENT OF USE:

No additional water or use is being sought beyond the scope of the original water rights, therefore, enlargement of this right should does not appear to be an issue.

LOCAL PUBLIC INTEREST:

There is nothing to suggest that this application is not within the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES:

Applicant proposed beneficial use consistent with feedlot standards for the area.

Review of the application finds there is no clear inconsistency with criteria of I.C. § 42-222 preventing processing of the application.

NARATIVE

The largest issue for this transfer and the amendment appear to be the government lots and the locations of the wells. This facility encompasses the entire NENE ¼ Lot 1 and a small portion of the NWNE ¼ now known as Lot 9. The NENE ¼ is listed as government lot 1 and the NWNE ¼ is split into government lot 9 and government lot 11. On the original survey, the NWNE ¼ was a single lot and listed as government lot 2.

The change in government lot designation is where some of the discrepancy of the place of use comes into play on the Snake River Basin Adjudication (SRBA) decree. The adjudication agent recommending water right 57-7392 to the SRBA court originally listed the point of diversion the NWNE Lot 2 and the place of use in the NENE Lot 1 and NWNE Lot 2. The Bureau of Land Management (BLM) objected to the recommendation stating the water right was actually in the Lot 9 of the NWNE. Therefore, the recommending agent changed the entire place of use and points of diversion to the NWNE Lot 9. The portion in the NENE Lot 1 was erroneously left off the final decree. The actual place of use is and always has been in the NENE Lot 1 and NENE Lot 9. Therefore, the correction of the place of use should be corrected as displayed on the transfer for water right 57-7392.

The two wells that were originally listed for 57-7392 and the three wells listed for 57-11630 were all described in the NWNE Lot 9 along the west side of the facility. However, Lot 9 is a fairly small area (approximately 160 feet wide by 1320 feet long), and the owner had problems with the wells being so close together. Therefore, they decided to move the new well proposed in 57-11630 approximately 1300 feet northeast of the original site to more evenly space out the wells within the approximately 42 acre facility site. This amendment and transfer were filed to properly locate the wells on both water rights and to add the third well to 57-7392.

These two rights are the only rights used for this facility. There should be no serious issues with overlapping water rights.

CONDITIONS AND SUGGESTIONS

This transfer seems acceptable as listed on the front page of the transfer with the inclusion of the conditions on the draft approval.