

MEMORANDUM

TO: FILE
FROM: DANIEL A. NELSON
DATE: 2/1/2007

**RE: SUNDANCE INVESTMENT LTD. PARTNERSHIP TRANSFER,
RIGHT 63-31194**

The transfer proposes to move the point of diversion approximately 1300 ft southeast to an existing irrigation well, and adjust the place of use at the same location to better suit the applicant's proposed subdivision on the corner of Overland and Eagle Road in the Silverstone Campus Subdivision. The place of use will be adjusted for the same acres in the E ½ NW. The point of diversion will be moved from the NENW to an existing well in the SWNW S21 T3N R1E, Ada County.

AUTHORITY TO FILE:

The applicant supplied several Warranty Deeds showing the ownership of the land where the water will be and will continue to be used. There was a dispute between the former owner of the right Darwin McKay and the applicant concerning the ownership of the water right. According to Mr. McKay the water right was separate from the land. However, it is the understanding of the department that once the water right is licensed it is appurtenant to the land, and ceases being a private right. Therefore, it was determined by State Office staff that the applicant owns this water right.

WATER RIGHT VALIDITY:

This water right has been reviewed several times over the past few years. Each of those reviews show that the water right is valid. Regional staff recently recommended this right to the Snake River Basin Adjudication (SRBA) court, therefore, the validity of the right should not be an issue.

INJURY TO OTHER WATER RIGHTS:

Our office has received no information to suggest that this transfer will cause injury to other rights. Prior to the transfer this right was used to irrigate a turf farm, and after the transfer, it will be used to irrigate lawns and landscaping in a commercial subdivision. The same amount of land will continue to be irrigated, so there shouldn't be a significant change in irrigation habits.

ENLARGEMENT OF USE:

The applicant has not proposed any enlargement of this right. In reality, it is unlikely that 48.5 acres will be irrigated in this type of subdivision at full build out.

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 irrigation 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 is the ownership issue. Jeff Peppersack worked on the ownership issues with this right, and he requested that I go forward with the transfer. It appears as though our office doesn't have the authority to determine ownership beyond the narrow scope of what is shown on the Warranty Deed. Therefore, if Mr. McKay wishes to pursue the ownership issue, he will need to do so through Civil Action.

The point of diversion was moved from the original well to an existing well drilled under water right 63-31258. Water right 63-31258 and the well drilling report show the well as being located in the SENWNW of S21, but the applicant pointed out the well house in the 2004 aerial photo and it is clearly in the SWNW S21. The applicant was positive of the location of the well from the aerial photo. The owner listed the correct legal description for the well on this transfer, and will file an amendment to permit 63-31258 to correct the legal description of that water right. This water right and 63-31258 will be diverted from the same well, so they will eventually need to have the same legal description. I will include condition X35 on the transfer.

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.