

Memorandum

Date: June 27, 2006

To: Transfer 72440

From: Jeff Peppersack

Re: Review of Expansion Right 43-10069 and Requirements of Section 42-1416B, *I.C.*

Transfer 72440 proposes to change the nature of use for several rights, including an expansion right, from irrigation to cooling use. Right 43-10069 was decreed as an expansion of 43-2381 and 43-2534B in the SRBA. Since the right is within a critical ground water area, Section 42-1416B, *Idaho Code* applies. Part 4 provides as follows:

If the director finds that an adequate management program to bring withdrawals into balance with recharge does not exist, the director shall order all holders of rights to expanded use of ground water within the area to cease or reduce withdrawal of water until such time as the director determines that withdrawals have been brought into balance with recharge and sufficient ground water is available to resume or increase withdrawals.

The pertinent rights were decreed as follows:

43-2381

1.67 cfs, 660 af, 165 acres

43-2534B

3.96 cfs, 884 af, 221 acres

43-10069

5.63 cfs, 1544 af, 542 acres

Combined limits were applied to the rights to provide no more than 5.63 cfs and 1544 af.

The transfer applicants provided documentation confirming that the entire 1544 af was historically fully-consumed for crops (and associated losses) under the pivot irrigation system in a deficit condition. The cooling use proposed under the transfer will include land application of the wastewater for consumption by crops. Consumptive use will not increase as a result of the transfer.

The issue that must be addressed for the transfer is how potential curtailment of the expansion right under Section 42-1416B, *Idaho Code* could be administered. The expansion right only added acres, not rate nor diversion volume. Consumptive use was added due to an increase in acres with crop production. Curtailment as irrigation use could be administered by idling the appropriate number of acres; therefore, reducing consumption. If the transfer is approved to

change the nature of use, acreages will no longer apply to the right. Curtailment of the expansion right would still leave 1544 af and 5.63 cfs available for diversion under rights 43-2381 and 43-2534B with the potential for full consumption.

To address the potential injury, each right should be limited to the volume historically used on the acres authorized for each right. There were a total of 928 acres authorized with a volume of 1544 acre-feet (1.663 af/acre). At 1.663 af per acre, the limits would apply to each right as follows:

43-2381
1.67 cfs, 274.5 af

43-2534B
3.96 cfs, 367.7 af

43-10069
5.63 cfs, 901.8 af

A combined limit of 5.63 cfs would still apply to the rights.

As an alternative, the applicant could provide documentation of historic consumptive use under rights 43-2381 and 43-2534B prior to the expansion right. If a higher consumptive volume can be documented for each right when compared to the first alternative, those limits could be applied to 43-2381 and 43-2534B with the balance of the 1544 af applied to the expansion right.