

MEMORANDUM

TO: Transfer No. 67055 & Amendment No. 69884 Files

FROM: Steve Lester

DATE: October 27, 2006

RE: Evaluation of Sufficiency of Information Submitted

Transfer – includes 5 licenses (63-3271, 63-3445, 63-3487, 63-7025 and 63-8088) plus 3 beneficial use claims (63-30296, 63-30297 and 63-30298).

Amendment – permit 63-12296.

The Idaho Department of Corrections (IDOC) proposed changes to its water rights serving the prison complex south of Boise. The transfer and permit amendment applications originated in 1999. Previously amended versions were protested by United Water Idaho (UWI). The parties resolved the protest with a private agreement submitted to IDWR. The agreement does not include conditions subject to IDWR jurisdiction.

IDOC and IDWR worked together in recent months for approvals to be issued. Western Region allocation and adjudication staff met recently with IDOC to work through some remaining issues. Accordingly, IDOC amended both applications on October 11. Although additional legal notice and fees were not needed for this step, UWI was provided a comment period through October 25. Roger Dittus from UWI called Western Region on October 26 to report that UWI did not have concerns about the amended applications.

The recently amended applications propose these revisions:

1. List all wells as P/D for all rights instead of segregating irrigation from municipal wells (one system vs. two).
2. List all wells to 40-acre instead of 10-acre locations.
3. Amend the permit by retaining irrigation use but changing 4.23 cfs from domestic to municipal (instead of changing all 5.00 cfs to municipal).

The applications can be approved as outlined in this memo. The applicant will have an opportunity to respond to the approvals. Assuming no significant changes result from that process, IDWR can prepare SRBA recommendations based on the transfer approval (the permit is beyond SRBA scope). SRBA recommendations need to be completed by November 17 to be included in the Basin 63 Part III Director's Report.

Everything is on track to successfully meet the SRBA deadline.

Preliminary Orders approving the applications should be sent to IDOC ATTN Pat Donaldson with a copy to Deputy AG David Barber. Those two have been very helpful in working through this process.

Summary of Information Submitted

Note: For simplicity, the rights being transferred and the permit being amended are sometimes collectively referred to as rights.

Authority to File: The applicant owns the rights.

Water Right Validity: Transferred rights are presumed valid based on thorough SRBA review with one exception noted below. Licensed rights were claimed more or less as licensed with some minor differences generally focused on accomplished P/D changes. All of the licensed irrigation is recognized by the adjudication review. Note that right 63-3445 will revert to its pre-Transfer 5314 full irrigation status. Previous IDWR file information in that regard adequately verified full irrigation. Approval of Transfer 5314 was followed by the filing of Transfer 67055 about one year later. These factors favor reversal of Transfer 5314 without complications.

Beneficial use expansion claim 63-32096 will be disallowed in the SRBA. That claim is not included in the transfer approval. That claim was not included in application data entry due to some problems dealing with this in Workflow.

The permit remains in good standing assuming an approved extension of time to file proof of beneficial use (pending at SO). Ideally the extension approval will be part of the amendment approval.

Injury to Other Water Rights: Injury to other rights is not found. Settlement of the protest reinforces this conclusion.

Enlargement of Use: Enlargement is prevented by limiting the nature of use change to appropriate amounts reflected in the draft approvals. While municipal use in the permit is considered fully consumptive (existing condition of approval), municipal use in the transfer is not. This fully consumptive issue revolves around land application practices necessary for environmental requirements.

Transfer approval should not include a condition stating that municipal use is fully consumptive. Since municipal water under the transfer derives from retired irrigation, a fully consumptive clause would result in an enlargement. Land application of municipal water will result in de minimus consumptive use during the non-irrigation season if this practice is needed during those times. Land application of municipal water during the irrigation season will mimic irrigation use after water is first used for non-consumptive uses (potable water etc.). Therefore, land application under the transfer will not result in an enlargement.

Local Public Interest: Both approvals serve local public interests.

Beneficial Use/Conservation of Water Resources: Both applications propose beneficial use consistent with conservation of water resources in Idaho.

Approval of both applications is consistent with criteria of I. C. § 42-211 (amendment) and § 42-222 (transfer).

Discussion

Data entry affected correct records.

The same boundary will define irrigation and municipal uses. The uses are kept separate to distinguish traditional irrigation of cropland from typical municipal uses generally served by separate wells. (The separate well thought is subject to change in the future for this site as noted below.)

Both draft approvals reflect a system of 9 wells for dual uses in a large area. The wells can provide irrigation and/or municipal uses within the boundary. The boundary is a 3125 acre PPOU for irrigation that doubles as a municipal use service area.

All the public water supply wells can provide backup to irrigation use but not vice versa. Some of the wells are older irrigation wells that cannot be used for potable water at this time. However, IDOC estimated that eventual replacement of such a well with a well constructed to public water supply standards would be cost effective in the long run. The approvals reflect this possible flexibility. The approvals also list the wells to 40-acre tracts for additional well replacement flexibility in the future.

Both applications propose some irrigation and some municipal uses. IDOC has ceased irrigating cropland at the site. Apparently the irrigation rights or portions of rights will be leased into the water bank. Municipal approvals will provide the necessary water for the site. This will include miscellaneous irrigation (defined under municipal use) other than agricultural cropland.

Verifying Beneficial Use and Combined Limits For Transfer

Transfer 5314 for 63-3445 will be reversed to cover full irrigation as in the original license. That irrigation was previously verified and is reconfirmed by current SRBA analysis. All the other irrigation licenses are similarly verified by adjudication review. Acres, rates and volumes are adapted from the licenses with one exception. Volume in 63-3271 was not previously defined. Using “volume required vs. volume diverted” analysis, allow full volume of 1026 afa for that license ($V_r < V_d$).

Additional review reveals license 63-7025 adds 163 unique acres to the total (264 acres minus 101 overlap acres with 63-3271 and 63-3487). Total licensed acres includes 1080 unique acres with 18.64 cfs and 4860 afa (full volume).

As already noted, expansion claim 63-30296 (added 33 unique acres to the total) will be disallowed and is excluded from transfer approval. It is not necessary for transfer approval to state this disallowal – that can be covered by the adjudication process.

Licenses 63-3487 and 63-7025 include about 6 cfs/2038 afa for domestic use that can be changed to municipal use. Again, SRBA verification of historic use supports this change. Additionally, current transfer policy (Transfer Memo #24, item 5d “enlargement of use,” subsection 13 “historic use recognized for municipal purposes”) supports this change. The thrust of subsection 13 recognizes that domestic use historically acting like municipal use can be changed without considering this an enlargement of use.

Beneficial use claims 63-30297 and 63-30298 for “42-111 exemptions” were verified by SRBA review. The claims include data collected by SRBA staff in the mid-1990s. Staff visited on-site with system operators, which resulted in the claims being filed. Domestic use for the meat packing plant in 63-30297 is limited to 2500 gpd. Stockwater use for 63-30298 is limited to 13,000 gpd. Allow 2500 gpd all year for the former without additional data (2.8 afa). Allow 12,050 gpd all year for the latter based on system data previously provided to IDWR (13.5 afa). It is not unreasonable to assume year around usage or close thereto for the prison setting.

The total municipal rate of flow in the transfer must be limited by constraints for the rights that will provide this use. Then the total municipal rate can be factored into all necessary constraints to yield the total flow rate for all uses in the transfer. Here is the layout for that:

Total irrigation rate = 18.64	= + 18.64
Municipal rate 63-3487 = 5.40 / only 2.60 cfs of that is additive per license	= + 2.60
Municipal rate 63-7025 = 0.50 / but none of that is additive per license	= + 0.00
Municipal rate 63-30297 = 0.04 / all of which is additive in transfer	= + 0.04
Municipal rate 63-30298 = 0.24 / all of which is additive in transfer	= + 0.24
Sum of above rates	= 21.52
Allow maximum rate applied for in transfer	= 21.24

Allow 18.64 cfs for irrigation and 6.18 cfs for municipal. Limit the total combined rate to the maximum applied for in the transfer application, 21.24 cfs. Volumes for those uses are additive (6914.5 afa) and are capable of being produced by the system ($21.24 \times 365 \times 1.8935 = 15,377$ afa).

Disregard “fire protection” use in any rights. That does not add rate or volume to any right in the transfer and will be covered by municipal use.

Transfer limits should be linked with permit limits.

Limits in Amending the Permit

The permit authorizes 45 acres in a 165 acre P/U. It also covers 4.23 cfs for up to 3700 people. The permit is considered fully consumptive due to land application requirements.

The 45 acres add 40 unique acres to the total P/U (5 acre overlap with 63-3445 when consider original licensed irrigation prior to T5314 that is now being reversed). Therefore there will be 1120 total unique acres of irrigation under the transfer (1080) combined with the permit (40).

Use the 100 gpd/person licensing standard for this setting (same standard used in most recent license with domestic use, 63-7025). Limit municipal use to the maximum volume the domestic use could be licensed for: $(3700 \times 100 \times 365) / 325850 = 414.5$ afa.

Irrigation volume remains undefined by IDWR standards in the permit. Rate limits are maintained in the amendment ($0.90 + 4.23 = 5.00$ cfs). Conditions of approval reflect combined limits with the transfer where appropriate.

See the attached tables for a summary of transfer and amendment uses, flow rates, volumes and combined limits. Also see the attached irrigation overlap diagram.

Conditions of Approval

Draft conditions are based on existing conditions, standard requirements for proposed uses, and a few odds and ends. The odds and ends are noted below.

Internal IDWR consultation suggested a condition of approval that municipal use does not cover crops. IDOC asked for a condition of approval clarifying that municipal use does include other types of irrigation (lawns etc.).

Internal IDWR consultation also suggested a condition to verify which use is being served by which well(s) at any given time since two separate systems are not proposed. A suggested condition from a previous case was modified to require this if needed in the future (for example, if annual reporting becomes required).

A condition notes that municipal use does not include irrigation of cropland, another suggestion resulting from internal IDWR consultation.

A condition notes that municipal use does include other types of irrigation. This was requested by the applicant for future clarity – seems like a good idea.

Summary

1. **See draft approvals. Note that it is acceptable to remain silent on disallowal of expansion claim 63-30296.**
2. **Include approved extension of time for permit (5 years?).**
3. **Issue preliminary orders ASAP to accommodate SRBA deadlines.**
4. **Mail orders to IDOC Attn. Pat Donaldson at applicant's address.**
5. **Send a copy of orders to Deputy AG David Barber at:**

**PO BOX 83720
BOISE ID 83720-0010 (tel 334-2400, fax 334-2690).**

Attachments: Table 1. Transfer 67055
Table 2. Amendment 63-12296
Table 3. Transfer 67055 and Amendment 63-12296 Combined
IDOC Irrigation Overlap Diagram