

MEMORANDUM

TO: FILE
FROM: DANIEL A. NELSON
DATE: 2/23/2006

RE: CORP. PRES. BISHOP LDS CHURCH TRANSFER 72660

This transfer proposes to abandon water right 61-7298 and adjust water rights 61-7265, 61-12079, and 61-12010 to supply 250.5 acres of irrigation within a 320-acre place of use from an existing well. Water right 61-7265 will be reduced to 0.72 cfs, 351.3 afa, and 87.8 acres of irrigation within the above-mentioned place of use to eliminate combined water right restrictions on this right, and make it a stand-alone water right. Water right 61-12079 will be taken out of the water bank and the entire right of 0.92 cfs, 252 afa, and 63 acres of irrigation will be moved to the point of diversion and place of use mentioned above. Water right 61-12010 will be split and 1.99 cfs, 398.8 afa, and 99.7 acres will be retired at the current place of use and will also be moved to the place of use and point of diversion described above. The point of diversion is located in the NESW and the place of use will be in the NE and SE of S6 T3S R5E Elmore County also described as 2 ½ miles east of Simco Road and South Cinder Butte Road.

AUTHORITY TO FILE:

The applicant is the owner of record for 61-12010 and 61-12079. 61-12079 is officially in the name of Farmland Reserve, but they are under the umbrella of companies owned by the LDS Church. Ownership documentation has been supplied for the water right 61-7265. They have supplied a Warranty Deed and Bureau of Land Management Patent showing their ownership of the property where the water will be moved. Therefore, ownership to file this transfer has been proven.

WATER RIGHT VALIDITY:

Water right 61-7265 was decreed in the Snake River Basin Adjudication (SRBA) in April of 2001, and 2004 aerial photography indicates irrigation at the location described. Water right 61-12010 was decreed in 2004 and also appears to be irrigated in the 2004 aerial photo. Water right 61-12079 was associated with water right transfer 70098, which determined it was valid. This water right has resided in the water bank since that transfer was approved. Therefore, it is safe to assume all three rights are valid water rights.

INJURY TO OTHER WATER RIGHTS:

This transfer was originally filed by the LDS Church to move water right 61-7298 to the legal description marked on the transfer. However, after a review of the water rights and the legal agreements concerning the sale of the property, it was discovered that the LDS Church could only irrigate a small portion of their property if their neighbor, Reynolds and Sons, didn't use their full irrigation right. The LDS Church and Reynolds and Sons were under the impression that they could irrigate the full value of their rights without the combined limitations, so this land has been irrigated since 1998 without any dispute or complaint from anyone.

Once the error was discovered, the church has worked diligently to correct the problem, and amended the transfer to bring in other water rights to ensure the land they have been irrigating is properly covered by valid water rights. Whereas this transfer was filed to correct an existing situation that hasn't been disputed, there is no anticipation of injury, and this transfer will more than likely resolve any future concerns.

ENLARGEMENT OF USE:

The applicant has proposed to abandon one of the existing rights on this property, and reduce the other in an attempt to free themselves of any combined conditions. This reduction is a good faith effort to prevent any suspicion or doubt of possible enlargement of the right. The combined limitations on all the other rights will also be reduced, so enlargement shouldn't be an issue. Enlargement of this right has not been proposed.

LOCAL PUBLIC INTEREST:

There is nothing to indicate that this transfer is not in the local public interest.

BENEFICIAL USE/CONSERVATION OF WATER RESOURCES:

This transfer proposes beneficial use consistent with conservation of water resources in Idaho and has been operating using licensed water rights with the State of Idaho.

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

NARRATIVE

The biggest issue with this transfer was and still is the combined limitations on the water rights involved. When the transfer was initially filed, it only listed water right 61-7298. During my review of the rights, I discovered that water right 61-7298 had conditions that limited the diversion rate and volume of the this right when it was combined with water rights 61-7196, 61-7206C, 61-7240, and 61-7265. When all these rights were first licensed, this combination was acceptable, because a single individual farmed all these rights. The practice at the time of licensing was to rotate cash crops such as sugar beets and potatoes to different fields that irrigated approximately 822 acres within approximately 1017-acre area. The idea of a permissible place of use was not used at the time of licensing, so all of the land was licensed with conditions limiting the rate, volume and acres irrigated each year.

Unfortunately, the original farm was under two separate ownerships that were actually combined together by single farm manager. The farms were subsequently sold to separate owners, the LDS Church and Reynolds and Sons. Reynolds and Sons purchased the portion of the farm with the most senior water rights, and then filed a transfer to include these rights into their existing permissible place of use. With the approval of this transfer, it allowed Reynolds and Sons to use the full allocation of water allowed under their rights each year. This only left 0.72 cfs available to use on the 299 acres owned by the LDS Church, since they had the most junior rights. Please see my 10/28/2003 letter that gives the complete background of the water right apportionment.

The applicant gave a valiant effort to work out an agreement with Reynolds and Sons to resolve the situation, but soon realized that the combined limitations on the rights would not work for either party. Therefore, they sent me a letter requesting that water right 61-7298 be abandoned, and water right 61-7265 be reduced to 0.72 cfs/351.3 afa/ and 87.8 acres. This request should allow the conditions associating water right 61-7265 with the Reynolds and Sons rights to be removed, which would make 61-7265 a stand-alone water right. I have discussed this with Western Region administration and State Office staff and everyone feels this is an acceptable and reasonable way to cleanup both parties water rights. By limiting the 61-7265 to these amounts, there will be no affect on the Reynolds and Sons water rights. This seems to be a very good solution for all involved.

Water right 61-12079 is also encumbered with a combined condition limitation. Water right 61-12079 is limited to 17.31 cfs, 3500 afa, and 875 acres when combined with water rights 61-12011, 61-12078, 61-12079, 61-7306C, and 61-7390. The combined condition limitations on water right 61-12079 are not as significant as they are on 61-7265 discussed above. The rate of diversion limitation is additive for all the rights, and the acre and volume limitation excludes the 29 acres and 116 acre feet described in water right 61-7306C. Therefore, it shouldn't cause any harm or problems to remove all of water right 61-12079 from the other water rights. Water rights 61-12011, 61-12078, 61-7306C, and 61-7390 may need to be included in the transfer as associated rights in order to change the combined limits to 16.39 cfs, 3248 afa, and 812 acres. This shouldn't be a problem, but the owners of the remaining rights, North Cider Cone Butte Farm LLC, should be informed, so a comment letter will be sent to them. The combined conditions should not be carried over with water right 61-12079, since it is no longer part of the same system. If we do carry this condition over, it will cause the same problem created with water right 61-7265.

Water right 61-12010 once again is encumbered by similar combined conditions limiting it to 17.73 cfs, 4672 afa, and 1168 acres when combined with water rights 61-7210 and 61-12013. The limiting portion of this condition is the diversion rate, because the number of acres and volume are additive for the three rights. The three rights are limited by the system capacity, so if the combined diversion rate is reduced the same amount as the right being transferred there shouldn't be any problems. The right being transferred is one of the senior rights. Therefore the combined right amounts for these rights should be reduced to 15.74 cfs, 4273.2 afa, and 1068.3 acres. Where as the LDS church owns these rights, there shouldn't be any problem with this change.

There are no other overlapping water rights or issues concerning this transfer. This transfer is an excellent effort to clear up the multi-system overlapping rights that were created in the past. By keeping the systems separated, hopefully, we can avoid these types of confusing situations in the future. Water rights 61-12079 and 61-12010 are both senior rights in their combined irrigation systems, so they will both have priority over the other rights in their perspective systems. Water right 61-7265 is being reduced to relieve it of any the combined encumbrances from the Reynolds and Sons water rights so it should be considered a stand-alone system. If the transfer is approved, combined conditions should not be necessary, because all of the diversion rates, volumes, and acres for this system will be additive, with no combined limitations.

SUMMARY

This application seems to adhere to the same criteria as the former transfers. The same conditions should be used on this transfer as was used on the previous transfers.