

MEMORANDUM

TO: FILE
FROM: DANIEL A. NELSON
DATE: 2/9/2005

RE: DON K. WEILMUNSTER TRANSFER # 72203, RIGHTS 65-2887 & 65-7346

The purpose of this transfer is to re-arrange the lands being irrigated to allow two pivots to be used to irrigate the existing ground. Even though the number of acres per legal tract will change the farm is still located in Sections 21 and 22 of Township 9N, Range 4E in Boise County. The same points of diversion in the SENE Section 23 and NWNE Section 21 will not be changed. The property is located ½ mile east of the point where the Middle Fork and South Fork of the Payette River join near Crouch.

AUTHORITY TO FILE:

The applicant has supplied a warranty deed showing solely the applicant owns the ownership of a portion of the property. A quitclaim deed for remainder of the property was submitted showing conveyance of the property to the applicant from Richard and Patricia Wilcomb. The water rights associated with this property were decreed in the Snake River Basin Adjudication (SRBA) in the name WW Land with both the applicant's name and Mr. Wilcomb's name are on the water right. A warranty deed in the SRBA file shows ownership of the second parcel in the Wilcombs' and Weilmunster's name. I was asked to check with the Boise County, who still lists the Wilcombs and Weilmunster as the current owners. The applicant's attorney stated that he could not get Boise County to change the ownership of the property into Weilmunster's name. The applicant's attorney contacted Gary Spackman, and they agreed that if he could supply some additional information then we could proceed with the transfer. The applicant's attorney supplied the warranty deed conveying the property to both Weilmunster and the Wilcombs, and an unsigned copy of the agreement dissolving the partnership between Wilcomb and Weilmunster. I discussed this information with Gary Spackman, and he told me he thought that it would be sufficient in this case. Mr. Spackman did state that it would be best to include the following condition: "This transfer can be cancelled or revoked upon contest of the ownership of this property."

WATER RIGHT VALIDITY:

Right presumed valid since the rights were decreed in the SRBA on 11/3/2000. The decree date was less than 5 years ago, and the current 2003 aerial photos show irrigation. However, the SRBA recommendation questioned 3 acres of irrigation in the SWNW S22. The applicant only owns 30 acres in this tract. I raised this question with the applicant's attorney, and he said that the legal description was incorrect. I reviewed the 1987 aerial photos, and the Payette River Basin Adjudication (PRBA) aerial photos, and I agree with the applicant that the legal description was incorrect. I have supplied a 1987 aerial photo that shows the lands irrigated using the field boundaries shown in the PRBA aerial photo. There were 180 acres irrigated by the applicant on his property, however, they weren't correctly described in the legal descriptions on the water rights. Therefore, I believe that the entire 180 acres can be transferred to the new lands.

INJURY TO OTHER WATER RIGHTS:

These rights have been used in the past without consequence, even though things have changed in this area over the years, it doesn't appear there are any significant problems in the area. I don't anticipate any injury from this transfer proposal.

ENLARGEMENT OF USE:

This transfer will actually help conserve water, since they will go from an inefficient flood type irrigation system to more efficient pivots for the same number of acres. No expansion of the right is being proposed.

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 biggest issue with this transfer is the ownership discussed above. With the condition suggested by Mr. Spackman, I feel this issue should not be a problem.

The next issue is the 3 extra acres listed in the SWNW S22, that shouldn't have been there. The SRBA agent noticed this discrepancy, but there is nothing in the adjudication file that shows an attempt was made to remedy the situation. The mapping technology in the PRBA was not as accurate as our current mapping abilities; therefore, I believe that the applicant has always irrigated 180 acres. Sufficient data has been supplied This transfer will clarify the place of use; give a more accurate picture of the place of use.

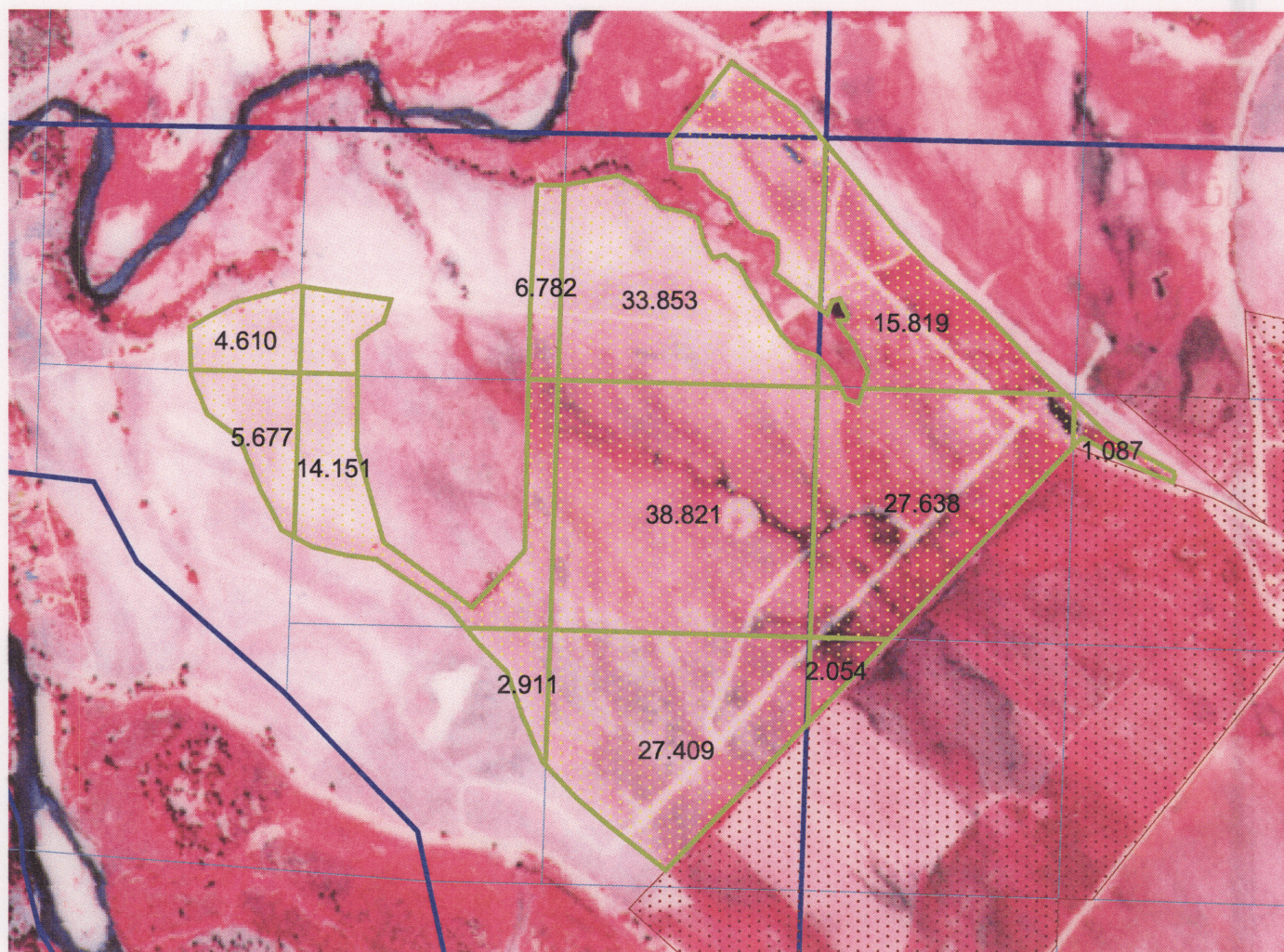
No other rights overlap applicant's place of use, or the point of diversion from the Payette River in Section 21. The point of diversion in Section 23 has approximately 23 water rights sharing this point of diversion and common ditch that transports to the applicant's place of use. The applicant hasn't requested any change in the rate, volume, or location of this point of diversion, so there shouldn't be a problem with these overlapping rights. The applicant has a small existing irrigation pond he will continue to use to regulate this water as needed.

When these two rights are combined, they will be limited to rate of diversion and volumes associated with the irrigation of the 180 acres. A combined condition will be need to be applied to 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.

65-2887 Payette River Maps



0.3 0 0.3 0.6 Miles

 Weilmunster Payette River Map

 65-9042. Place of Use

 Section Lines

 1/4 1/4 Lines

The applicant states that the lands associated with this water right were incorrectly mapped and described by both the Payette River Decree (PRD) and the Snake River Basin Adjudication (SRBA). I reviewed the PRD and SRBA maps, and I would agree with the applicant's assessment. The acres shown on the maps do not match the legal descriptions listed on either decree. The SRBA agent does mention a discrepancy in the acres, but there was no record in the file that she contacted the owner to clarify the water right discription. The maps clearly show that 180 acres were irrigated on the applicant's property. The above map shows the lands shown irrigated by the PRD aerial photo maps.

