

MEMORANDUM

TO: FILE
FROM: DANIEL A. NELSON
DATE: 9/21/2005

RE: EUREKA WATER COMPANY TRANSFER 71069

The transfer proposes to retire 8.1 acres of irrigation and change the nature of use for 0.16 cfs and 36.5 afa of this water right for groundwater recharge. The groundwater recharge is in response to a mitigation plan for application for permits 63-31134, 63-31135, and 63-31136. Water right 63-145 was the only water right used on the initial transfer per direction from regional staff. However, it has been determined that water right 63-16383 must also be included, since it is a direct overlap of the acres irrigated under 63-145.

AUTHORITY TO FILE:

The applicant is the same name listed on the currently existing water rights and Snake River Basin Adjudication (SRBA) claims.

WATER RIGHT VALIDITY:

These water rights have been reviewed and recommended by Mel Schulte. Therefore, validity of these rights should not be an issue.

INJURY TO OTHER WATER RIGHTS:

These rights have been in use for several years. The groundwater recharge will be used to mitigate the consumptive evaporation of the ponds applied for in application for permits 63-31134, 63-31135, and 63-31136. The permits requiring this transfer for mitigation have completed advertising without protest. Our office is not aware of any possible injury by the proposed use.

ENLARGEMENT OF USE:

These water rights have been used for irrigation for a number of years. The land formerly irrigated will be retired from the installation of the ponds and the retirement of irrigated land due to the building of roads and homes. Please see the email from the Mike Creamer showing the lands to be retired. The amount of water evaporated by the ponds is considered to be equal to the evapotranspiration from alfalfa. Therefore, the amount of water consumed should not change significantly. The water rights will be limited to a total annual volume of 25.1 afa when combined.

LOCAL PUBLIC INTEREST:

Our office has no information to suggest that this application is not within the local public interest. The permits requiring this transfer for mitigation have completed advertising without protest.

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.

NARATIVE

This application was originally filed 8/29/2002. I have worked with Jeff Peppersack and Cynthia Bridge Clark on this application. Cynthia is the person who is working on the approval of the permit, which will be approved when the transfer is approved.

It has been decided that a one for one swap, 1-acre of pond surface area for 1-acre of irrigated land retired, would be acceptable in this instance. The original transfer only listed 7.5 acres of irrigation being retired. The 7.5 acres was the land in the canal company borders being converted to ponds. The transfer was amended to provide for historic consumptive use under the original pond memo that would have required the retirement of 10.5 acres instead of the 8.1 acres currently proposed. The applicant's attorney and the attorney for the permit holder spoke with State Office staff, and they agreed to the one to one swap mentioned above.

Jeff Peppersack determined that a second amendment was not needed, because the negotiation between the parties allowed a reduction of the amended application. Therefore, the reduction could be done as part of the transfer processing with a letter from the applicant's attorney agreeing to the 8.1 acres. Our office received this letter from the applicant's attorney.

It was decided at the beginning of the process to use only one of the Eureka Water Company water rights for this transfer. This was the standard practice at the time the application was filed, and it has been agreed upon to continue with practice through the processing of this transfer. However, after initial review by State Office staff it was determined that water right 63-16383 would need to be included in the transfer, because it is a direct overlap of the acres listed under water right 63-145. It was also discovered that legal description on the transfer in the SWNE S20 was incorrect, and should be the SENE per the maps supplied. It was determined by the State Office staff that a new amendment to the transfer would not be necessary, since the addition of water right 63-16383 and the correction of the legal description were considered clarifications to the transfer.

The point of diversion on the application is listed in the SWNENW S24, but the recommendation created by Mel Schulte discovered that the point of diversion was actually in the L6, NWSENE S24. The applicant did not request to change the point of diversion, so the point of diversion listed in the recommendation was used. The applicant has been contacted about this issue.

Whereas one of the ponds is located outside of the borders of the Eureka Water Company, not all of the lands can be retired by the construction of the ponds. The remaining lands being retired will be covered by the construction of roads and homes. There will more land retired by the development of the subdivision and the ponds than the 8.1 acres needed to mitigate for the permits.

I spoke with Pam Skaggs on 2/18/2004 concerning the shape needed for the changed portion. Several ponds will be spread over a rather large area encompassing portions of three 40-acre tracts. Therefore, it was decided that a shape outlining the subdivision would be the best way to depict the location of the groundwater recharge. The groundwater recharge will be the diversion of canal water into the ponds.

I feel that the use for this change of use should be described as mitigation, instead of ground water recharge. However, the applicant was insistent on this description, and the State Office staff confirmed that we have used this terminology in the past for these types of situations. Therefore, it was determined to leave this use description as it was listed on the transfer.

It looks as though storage water under water right 63-3618 from the Bureau of Reclamation may supply some of the water for this canal company. A comment letter will be sent to the Bureau of Reclamation on this water right.

CONDITIONS AND SUGGESTIONS

This transfer seems acceptable with the conditions suggested in the draft approval. The water rights should be shown as follows:

RIGHT NUMBER	PRIORITY	AMOUNT CFS/AFA	NATURE OF USE	PERIOD FROM	PERIOD TO
63-145	6/1/1865	33.17 cfs	IRRIGATION	3/1	11/15
63-145	6/1/1865	0.15 CFS	GROUND WATER RECHARGE	3/1	11/15
63-16383	3/1/1890	2.30 cfs	IRRIGATION	3/1	11/15
63-16383	3/1/1890	0.24 cfs	STOCKWATER	1/1	12/31
63-16383	3/1/1890	0.01 cfs	GROUND WATER RECHARGE	3/1	11/15
<u>TOTAL</u>		35.36 cfs *			

* No Volume is to be added onto these rights. The volume limitation will be dealt with in a condition that will read "When 63-145 and 63-16383 are combined they are limited to a total annual volume of 25.1 afa for ground water recharge."