

MEMORANDUM

TO: Transfer No. 71989

FROM: Lori Graves

DATE: 9/20/2005

RE: Evaluation of Sufficiency of Information Submitted

The purpose of the transfer is to add a second existing well as a point of diversion to water right license 63-2656A.

The site is located about ½ mile south of Hwy 20/26, just west of Linder Road.

Contact person for the applicant is John Marshall of Givens Pursley LLP, 601 W Bannock, Boise ID 83702.

Justification for Rejection/Denial:

The application for transfer in the name of Ben Lukehart was received October 15, 2004 from John Marshall on behalf of his client, Ben Lukehart.

The following items were requested several times from John Marshall via telephone:

1. Warranty Deed
2. Map showing the location of the old and new wells
3. Completed Part 1B of the transfer application
4. Completed question no. 9, Part 2A of the transfer application

John stated that he was unsuccessful in reaching his client, Ben Lukehart, and asked that a 30-day information request letter be sent directly to Mr. Lukehart, which was mailed April 4, 2005. The letter stated that without a timely reply, IDWR would issue a preliminary order to reject or deny the application. The applicant failed to respond.

Basic data entry and scanning of the application and correspondence have been completed. Please issue a preliminary order based on the lack of the above information and send me a copy for the file. Also send a copy to John Marshall. The transfer application will be held at this region until the appeal period is over.

If the requested information is submitted as a result of the order, processing will continue as usual. If the order is appealed, advertising of the proposal will proceed and the denial issue can be resolved in a hearing.

The requested information was submitted to Pam Skaggs 5/31/2005 via e-mail. Pam then forwarded the information to me so that processing of this transfer can resume.

Authority to File: The current record for right 63-2656A is not in the transfer applicant's name. A warranty deed dated 1999 was submitted listing the property in Ben and Teresa Lukehart's name. A quitclaim deed dated 2002 was also submitted, where Teresa conveyed her property interest to Ben. As a result, water right 63-2656A can be approved in Ben Lukehart's name as listed on the transfer application.

Water Right Validity: Right presumed to be valid based on the pending SRBA recommendation.

Injury to Other Water Rights: The original artesian well licensed for right 63-2656 was split three ways, serving three separate parcels. Split portion 63-2656B now uses separate ground water wells per approved transfer 71109. According to the SRBA recommendation for split portion 63-2656C, Catherine Nelson apparently started using her domestic well rather than the artesian well because of decreased production in the artesian well. She will be sent notice of this proposal.

Enlargement of Use: No change in nature of use has been proposed.

Local Public Interest: No negative impacts are anticipated.

Beneficial Use/Conservation of Water Resources: Proposes b.u. consistent with conservation of water resources in Idaho.

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

Additional Information &/or Analysis: See "Justification for Rejection/Denial" above.

Discussion: The proposed well was drilled in 2003 for Goldsmith/Farwest LLC. Marty Goldsmith drilled the well to supply water for 63-2656B prior to the approval of transfer no. 71109. A condition on the drilling permit stated that the well being replaced shall be properly abandoned within one year of the date the drilling permit is approved, unless a transfer is approved which authorizes an additional p/d. The drilling permit was approved 10/18/2003 and this transfer application to add a p/d was received 10/15/2004.

The .06 cfs amount listed on Page 1 of the transfer does not reflect the SRBA claim and not the SRBA recommendation. The amounts listed per use on the transfer approval represent the amounts recommended for decree in the SRBA.

In Part 2 of the transfer, applicant stated that no other water rights are used. This right is actually supplemental to Settlers Irrigation District water. The applicant confirmed via telecon 6/5/05 that he does pay for surface water shares, however currently does not have access to the surface water. He plans to retain his surface water shares and work with the district to regain access.

Note that the original right 63-2656 was not conditioned as a supplemental right, however the field exam stated that the ground water was supplemental.

Assuming protests are not filed and/or other information does not contradict the above analysis, and assuming it is determined the application should be approved, the conditions listed on the draft approval should be applied.

Condition 046 n/a since a new well has been drilled and an upgrade fee is not required.