

MEMORANDUM

TO: Transfer File No. 71619

FROM: Lori Graves

DATE: 2/10/2005

RE: Evaluation of Sufficiency of Information Submitted

Brief: Applicant has purchased a farm and wishes retire 276 acres from irrigation to build a dairy, drill two new wells for the dairy and combine all the associated water rights into a permissible place of use for irrigation and land application of dairy wastewater.

The site is located ~ 4 miles north of Parma and 2 ½ miles east of Hwy 95.

Contact person for the applicant is Darwin Vanderstelt.

Authority to File: The farm totals 1274 acres. Current records show that Ray Obendorf owns 1264 of the 1274 acres and Jerold Thiessen owns the remaining 10. The original transfer was filed with purchase/sales agreements between the applicant and both owners. Sales transactions have now been completed as indicated by the attached deeds. Ownership can be changed via this transfer.

Water Right Validity: Rights are presumed valid since Craig Saxton (SRBA staff) confirmed beneficial use and created shape files indicating the acres he plans to recommend for irrigation. Darwin Vanderstelt submitted an amended transfer based on the SRBA recommendations and included Craig's shape files as application Attachment A.

Injury to Other Water Rights: Applicant was asked to supply information evaluating the effect this proposal will have on the local aquifer and neighboring wells and his waste management techniques. That information was provided in a correspondence letter from Darwin Vanderstelt dated 11/30/2004. Please note that the Idaho State CAFO Siting Team made a suitability determination of the proposed dairy as being moderate risk.

Enlargement of Use: As specified on application Attachment B, 703.8 afa is required to meet the dairy water needs. The Allen Brockway report, using the Parma site and various crops planted during the 2000 and 2001 irrigation seasons, was used to determine the farms historic crop consumptive use volume. Based on this information, the average consumptive use volume/acre was calculated at 2.55 afa/ac. To satisfy the dairy needs, 276 acres must be taken out of production, which has been proposed. Two overlapping rights cover the 276 acres to be converted to dairy use. To prevent enlargement, applicant unstacked the water rights, per IDWR's direction. See application Attachment D for details.

Local Public Interest: Written documentation that the County, Department of Ag and DEQ have been notified was requested from the applicant. Applicant was also asked to explain the effects that the dairy will have on the local agricultural base. Again, that information was provided in a correspondence letter from Darwin Vanderstelt dated 11/30/2004. With regards to DEQ, the correspondence stated that "DEQ plays no role in regulating dairies, and unless there is a statutory requirement for notification, we politely demur". Because of the size of this dairy, it appears that DEQ will play a regulation role since the applicant will employ ≥ 25 people ≥ 60 dys/year. These numbers qualify the dairy as a non-community, non-transient public drinking water system (PDWS), which requires specific monitoring and reporting requirements associated with the system. Mr. Scarrow and Darwin were notified for DEQ comments 12/20/04. Mr. Scarrow telephoned 1/3/05 and stated that he left several telephone messages with Chas Ariss at DEQ to coordinate a meeting with regards to compliance with the PDWS standards. I had previously talked with Chas about Scarrow Dairy and Chas stated that this would be the first dairy subject to DEQ PDWS standards. After discussing the matter with the Attorney General's Office, Chas was not positive that dairies would be made subject to PDWS requirements. Chad Ariss is in charge of the PDWS program for DEQ and his telephone number is 373-0252.

2/10/05 Update: The transfer was advertised without protest. Rob Whitney nor myself have heard from Chas Ariss at DEQ regarding PDWS requirements. Rob stated that DEQ is aware of Mr. Scarrow's dairy and their lack of response should not hold up Mr. Scarrow's application, especially since they may ultimately decide dairies are not subject to PDWS requirements.

Beneficial Use/Conservation of Water Resources: Applicant proposed beneficial use 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 this application.

Additional Information: Two water rights overlap the 276 acre dairy site. The earlier right, 63-3182, provides full volume and 4.22 cfs to the 276 acres. The dairy only needs 1000 gpm or 2.22 cfs. Because 63-3182 provides full volume and more than enough flow rate, applicants consultant proposed reducing the later overlapping right, 63-31839, by 276 acres and spreading the extra cfs rate associated with those 276 acres on the remaining acres (see Attachment D included with the original application). Darwin did not realize there was volume associated with right 63-31839, however he stated that the volume associated with the 276 acres would be allocated to the dairy. Jeff Peppersack determined this to be an enlargement because the remaining acres would then be allocated more rate/acre, which allows the applicant to plant more consumptive crops. Jeff also stated that volume cannot be made separate from rate. Darwin's amended application reflects the appurtenant/appropriate volume and rate modifications from each associated right overlapping the dairy sight.

Discussion: The proposed ppu consists of nine water rights. Originally, there were six water rights but three of the rights were split when Mr. Obendorf sold 10 acres of the farm to Mr. Thiessen. Craig Saxton recommended all the licensed acres per right, although slightly shuffled, except for right 63-31839, which he reduced by 7.5 acres and 63-31840, which he reduced by 0.5 acre. Rather than 1274 total farm acres, Craig recommended 1266 total farm acres.

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Craig only had time to do the acre recommendation maps for each right. He did not have time to complete the recommendation report for each right. Because of this, the SRBA claims are the most current record and were used in part 2 of the transfer. Only portions of rights 63-3182 and 63-31839 were converted for dairy use. Although Part 2 of the transfer reflects the claimed amounts for these two rights, the description of the changed and unchanged portions of these rights reflects the SRBA recommended amounts.

The transfer attachment computations and proposed ppu also reflect the SRBA recommended acre amounts and locations, including the acre and associated volume reductions recommended for claims 63-31839 and 63-31840. Craig did not reduce the flow rates on these two claims because the original right was licensed for less than 1"/acre (.00246 cfs/ac).

The following outlines how the rights were licensed, split and recommended in the SRBA:

Right	cfs/afa	Acres	SRBA Claim	cfs/afa	Acres
63-3182	6.68/not listed	437	63-3182	6.68/1966.5	437
63-3308	4.18/1264.5	281	63-31854	.14/42.3	9.4
			63-31855	4.04/1222.2	271.6
63-3583	1.50/472.5	105	63-3583	1.50/472.5	105
63-7177	4.70/1570.5	349	63-7177	4.70/1570.5	349
63-7349	1.66/802.0	310	63-31841	1.62/782.6	302.5
			63-31842	.04/19.4	7.5
63-7903	3.13/1519.0	1274	63-31839	3.11/1498.1	1256.5
			63-31840	.02/11.3	9.5
			(8 acres of 1274 disallowed)		
63-7533	.45/27.0	Stockwater	63-7533	.45/27.0	Stockwater

All the nine water rights are based on irrigation licenses except 63-7533, which was licensed for only stockwater use. Craig stated that he would recommend this claim as licensed. Rights 63-31841 and 63-31842 (originally 63-7349) are subject to the condition that maximum diversion shall not exceed 5.84 cfs when combined with 63-31854 and 63-31855 (originally 63-3308) and 63-3583. This condition will be carried forward. The total cfs rate listed on page one of the transfer accounts for this combined limitation.

The transfer proposes a new dairy and combining seven existing irrigation wells, one existing stockwater well and two proposed dairy wells into a common system for
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irrigation within a 990 acre ppu. The proposed dairy will consist of 7000 milking cows, 1299 dry cows and 8299 replacement heifers. As indicated on application Attachment B, 361.53 afa is required for stockwater 369.29 afa is required for commercial uses associated with the dairy for a total of 730.8 afa. Water right 63-7533 was licensed and recommended for 27 afa for stockwater use, which reduces the total volume needed for the dairy to 703.8 afa. The amounts used to determine commercial and stockwater water needs for the dairy appear adequate and reasonable.

As mentioned above under Enlargement of Use, the Allen Brockway report and two years of cropping records were used to calculate the farms average consumptive use history per acre (see application Attachment C). Again, the calculations appear adequate and reasonable.

Please note that the minor variances found in application Attachments B and C are insignificant to the final results and can be attributed to decimal placement in the consultant's spreadsheets.

The flow rate calculations on Attachment D are adequate. The volume calculations are not. The dairy requires 703.8 afa with 47.5% used for stockwater and 52.5% used for commercial uses. Rather than using the calculations on Attachment D, the appropriate volume allocations are as follows:

The **senior right 63-3182** was licensed and recommended for full volume on the 276 acres.

$703.8 \text{ afa} \times 47.5\% = 334.3 \text{ afa stockwater}$
 $52.5\% = 369.5 \text{ afa commercial}$

$427 \text{ recommended acres} - 276 \text{ acres} = 161 \text{ acres}$
 $161 \text{ acres} \times 4.5 \text{ afa} = 724.5 \text{ afa irrigation}$

The **junior right 63-31839** really only provides additional flow rate on the 276 acres; all the dairy footprint acres and full volume are already covered on 63-3182. The cfs contribution of 63-31839 was determined on Attachment D at .21 cfs based on system average rate. Jeff Peppersack advised that we allow a proportional split of the licensed

volume per acre that is less than the consumptive use volume per acre, then limit the dairy uses of the two rights to a maximum 703.8 af.

$1519 \text{ af}/1274 \text{ acres} = 1.1923 \text{ af/acre} \times 276 \text{ acres} = 329.1 \text{ afa}$
 $3.13 \text{ cfs}/1274 \text{ acres} = .002456828 \text{ cfs/acre} \times 276 \text{ acres} = .68 \text{ cfs}$
 $.21 \text{ cfs}/.68 \text{ cfs} = 31\% \text{ of licensed flow rate applicable to the 276 acres}$
 $31\% \text{ of } 329.1 = 102.0 \text{ afa}$

$102.0 \text{ afa} \times 47.5\% = \mathbf{48.4 \text{ afa stockwater}}$
 $52.5\% = \mathbf{53.6 \text{ afa commercial}}$

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$1256.5 \text{ recommended acres} - 276 \text{ acres} = 980.5 \text{ acres}$
 $980.5 \text{ acres} \times 1.1923 = \mathbf{1169.1 \text{ afa irrigation}}$

No other rights are used for irrigation of the proposed acres or dairy use other than those listed on this transfer.

The transfer lists commercial use in each forty-acre tract to indicate land application of dairy wastewater. Because these lands are fully covered by irrigation rights, application of dairy wastewater can occur on these lands without being specifically identified as commercial p/u. Therefore, the commercial p/u identified on the transfer approval includes only the dairy footprint area.

A \$1070 fee was paid for the original transfer application. The amended application only requires a \$1030 fee. A \$40 refund has not been requested by the applicant and/or issued by the department.

The applicant did request that this transfer be expedited because he needs to decide who will lease the farm acres, which depends on what crops will be grown. If the dairy is approved, feed crops for the dairy will be planted. If not, cash crops will be planted. The applicant, as the lesser, and interested farmers, as lessees, need to know for planning purposes for the next irrigation season.

Conditions: 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 transfer approval should be applied.