

MEMORANDUM

TO: Transfer No. 71023
FROM: Steve Lester
DATE: October 28, 2004
RE: Evaluation of Sufficiency of Information Submitted

The transfer proposes to retire irrigation from one source and provide irrigation to another site from a different source around Idaho City. The new use will cover part of a new baseball field next to Mores Creek. The City has been trying to provide irrigation rights for this recreation project for several years. Restrictions in the Boise River drainage have made this difficult to achieve. **The City seeks expedited parallel processing of this proposal to meet 2005 irrigation season needs.**

Note that City attorney Bryce Farris is the contact person for this transfer. He has authority to sign for the City. Note proposed approval is in the name of BLM State Office ("current owner"). A copy of the transfer decision should also be sent to the BLM District Office ("representative").

Deviations from Transfer Policy Standards

The transfer proposal does not violate current standards but does have two unusual aspects discussed later in this memo: proposed source, and changing an irrigation right of less than one acre. Both items are adequately addressed by the transfer application. The items were discussed with Jeff Peppersack earlier this year when the applicant had requested expedited processing for the 2004 irrigation season (that urgency faded and the City hopes for a transfer decision before next irrigation season).

Summary of Information Submitted

Authority to File:

The right was decreed to Canody in the SRBA. Canody conveyed the right to the City as noted by transfer attachment 2. The proposed site is owned by the federal government and managed by BLM. Transfer attachment 5 documents BLM's consent to operate on the public land. Additionally, the applicant's letter of 7/6/2004 documents a lease from BLM to the City for the proposed site. The lease requires any water rights on the property to be in the name of BLM. The City has authority to file the transfer.

Water Right Validity:

The right is presumed to be valid because a partial decree was issued on 4/21/2003 within the past five year period.

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Injury to Other Water Rights:

A 1961 priority will be moved from Bear Creek to nearby Mores Creek. Bear Creek is tributary to Elk Creek. Elk Creek is tributary to Mores Creek about two miles downstream from the proposed site. Injury will not occur if a 1961 priority newly introduced to Mores Creek is subordinated to post-1961 surface water rights diverted upstream from the confluence of Mores Creek and Elk Creek.

Enlargement of Use:

An enlargement will not occur if diversion at the new site is limited to the amount of water available from Bear Creek for a 1961 priority.

Local Public Interest:

Irrigation of the baseball field is presumed to serve the local public interest.

Beneficial Use/Conservation of Water Resources:

The transfer proposes a beneficial use consistent with the 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

Watermaster
ok ✓

Watermaster comments will be obtained. Comments from IDFG and BLM will be sought.

Data entry affected the correct record: decreed water right already migrated to the database. Overlapping rights are not found at the existing or proposed sites. The existing P/U appears to also include an exempted domestic well. Use of such a well to irrigate a lawn at the current P/U does not constitute an expansion of use subject to IDWR regulation.

The transfer proposes shallow ground water collected and diverted next to Mores Creek with an alternate P/D from the creek if necessary. Many of the streams around Idaho City are suitable for this type of diversion due to mining practices over many years that resulted in disturbed gravels along streams, making surface water and adjacent shallow ground water virtually indistinguishable.

Adding Ground Water Source - IDWR has sufficient information to show the hydraulic connection between surface water and shallow ground water in the dredged gravels adjacent to creeks in the Idaho City area as follows.

1. The existing water right includes a diversion capturing shallow ground water adjacent and tributary to Bear Creek. The right was decreed with a surface water source.
2. Numerous excavated shallow ground water ponds are found along the Hwy 21-Mores Creek corridor around Idaho City. Some ponds are separated from Mores Creek by Hwy 21 but still contain ground water that is present because the disturbed landscape serves as an enhanced "conduit" of surface water. The ponds always hold lots of water, even in drought years, and have no other visible sources.
3. Similar but smaller wetted areas occur in the immediate vicinity of the baseball field between the highway & Mores Creek. These wetted areas are found upstream and downstream from the field in the dredged gravels. I saw some of these sites as recently as 10/15/04 while investigating a water complaint in the Idaho City area. The only explanation for the wetted areas I recently observed (outside of Mores Creek proper but in the dredged areas) is Mores Creek itself.
4. Idaho City has decreed municipal right 63-2627 from Elk Creek. The original diversion from the creek was replaced some time ago with a shallow ground water collection system developed beyond Elk Creek proper but within the dredged gravels of that creek. The right was recommended and decreed in the SRBA with an Elk Creek source, even after a SRBA field exam in which the shallow ground water diversions were documented. Ideally the SRBA recommendation would have included "ground water tributary to Elk Creek" to more accurately describe things. During the 2001 drought emergency, IDWR approved Temporary Change TC-63-01 authorizing an added P/D on the creek: checkdam to back up more water in the gravels to prevent city supply from dropping too much in late summer. This worked and the city got through that dry summer intact. City has filed a transfer application to make permanent that enhancement (not data entered yet).
5. City's Elk Creek system utilizes ground water diversions about 30 feet deep. City's proposed Mores Creek site seeks ground water less than 18 feet deep. Both cases involve shallow ground water from dredged gravels near the streams. Ground water appears hydraulically connected to surface water under the above circumstances.

In order to not lose track of a surface water right in the database by simply showing ground water as the new source, the application lists surface and ground water as alternate sources and P/Ds. This is a department convenience serving database purposes (IDWR suggested the application be amended to list both sources and two diversion points). This

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is particularly important in a water district. The wateruser gains an added advantage in having a backup diversion if needed.

Changing an irrigation right of less than one acre is acceptable in this case. First, the entire right is being moved. Second, the new use will remain under control of the Boise River Watermaster. Administration of the right is not complicated by this transfer.

To prevent an enlargement of use, a condition of approval linking the new diversion to the supply of water in Bear Creek is needed. To prevent injury by introducing a 1961 priority to Mores Creek upstream from the point at which Bear Creek flows would enter the system, a condition of approval is needed to subordinate the proposed use under certain conditions. Additionally, two pre-1961 Mores Creek rights are diverted between the proposed site and the confluence with Elk Creek. Those two rights were not affected by diversions from Bear Creek but could be by diverting at the proposed site. The attached map and spreadsheet illustrate this issue. The spreadsheet lists post-1961 surface water rights diverted upstream in the adjacent township to illustrate that some junior rights are found¹. Watermaster control (in this case, lockable diverting works without a measuring device are sufficient) is the other key condition to administer this transfer if approved. Watermaster control is sufficient to protect senior downstream rights.

As previously noted, this transfer will cover part of the athletic field. The City continues its quest to obtain more water for the rest of the irrigation. The City has had numerous contacts with IDWR over the past few years trying to address this situation. Transfer 71023 represents the first promising step in water right coverage for the new baseball field for Idaho City.

Summary

The application should be approved as noted in the draft approval assuming protests are not filed and/or other information does not contradict the above analysis. Approval should be in the name of BLM as noted in the lease information included with the 7/6/2004 BLM letter. Proposed conditions labeled X49, X53 and GEN address special concerns in this situation. Standard drilling permit condition is included in case the shallow ground water diversion needs to be deeper than 18 feet but still within the shallow gravels.

¹ T6N R6E contains the only significant amount of private land upstream from the proposed site. It is possible that other upstream areas include junior rights. T6N R6E is sufficient to make the point about not injuring upstream junior rights that have not been affected by diversion of 63-30398 from Bear Run Creek but could be affected by diverting from Mores Creek or tributary ground water.