

MEMORANDUM

TO: FILE
FROM: DANIEL A. NELSON
DATE: 5/20/2004

RE: BENARD L. BROWN TRANSFER NO 71266, RIGHTS 61-2154, 61-2155, 61-7005, 61-7119, 61-7396, AND 61-10378

The transfer proposes to create a common system so all the rights can be diverted from any of the wells and irrigate any of the lands within a permissible place of use of 1459 acres. All five wells will be added to each water right along with the permissible place of use border. The permissible place of use is located in the S ½ of the SW S 17, the S ½ of the NW and the SE of S18, all of S19, and N ½ and SE of S20, T4S R6E, Elmore County. The five points of diversion are located in the SESE S18, NWNW S19, NESW S19, NWNW S20, and SENE S20.

AUTHORITY TO FILE:

The applicant is the owner of record. There is land under water right 61-7119 that is owned by another party in the SW of S18 that is not owned by the applicant. This land was leased, and the lease has since expired. The applicant supplied documentation that shows the owner of the land that was leased released all claim to ownership of the water right. Therefore, authority to move the water from the SW S18 should not be an issue.

WATER RIGHT VALIDITY:

All of these rights have recently been decreed in the Snake River Basin Adjudication (SRBA).

INJURY TO OTHER WATER RIGHTS:

This is an existing system. The applicant is simply combining his system to allow for a more efficient irrigation system.

ENLARGEMENT OF USE:

No additional rate or volume is being requested, so enlargement of the right should not be an issue.

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 questions on the part 2's of the transfer were not completed because these questions are answered on page 2 part 1. The place of use is not actually changing, so it decided that it was not needed on both forms. These rights were very recently decreed, so the question on 5 years of non-use should not be significant except for 63-7119. However, 63-7119 was licensed in 2000, so it is should also not fall under the 5-year forfeiture rule. Therefore, this transfer shouldn't be held up by not having those questions answered.

The ownership of the rights were decreed in the name of Bernard Brown. The tax lot information show the lands being owned by Brown Farms LLC. with Bernard Brown as the president. The transfer application also shows Bernard Brown as the owner. Therefore, without any significant proof to change the ownership of the water rights, it was decided to keep Bernard Brown as the owner on all of the water rights.

This application is an effort to combine the entire irrigation system, to allow the applicant to irrigate certain lands each season with the oldest priority water rights. This would allow the applicant to irrigate his cash crops with the older water rights in case water rights are regulated in the mountain home area.

A portion of the lands listed on 61-7119 is land that was leased by the applicant. In order to move the water from this land, the applicant was required to supply a letter from the lessor releasing any ownership of the water right. The applicant supplied the letter, which stated that lessor released all claim to ownership of the water right.

There are a couple of old licenses that overlap the place of use. These old licenses are now held by and were decreed to Mountain Home Irrigation District. The lands described in the transfer are no longer within the borders of the district, so there should not be any problems with overlapping water rights.

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.