

Comment Report

Application ID 70679

1. jstanton 12/29/2003 2:44:13 PM Special Administration Area Notes
Comment: Special Administration Areas : None
Exempt:
Reason:
Doc Attached:
Explanation:

2. jstanton 12/29/2003 2:47:37 PM Additional Information Notes
Comment: Reviewed by Adjudication Staff: N/A
Mitigation Plan or acceptance form: N/A
Municipal Rights Anticipated Horizon Information: N/A

3. jstanton 12/29/2003 Comment/Analysis
Comment: This transfer changes the pou slightly to reflect what has recently occurred due to the installation of sprinklers to replace the original gravity irrigation on all but one small field (under 1/2 acre) in the NW corner of the property. By listing all the points of diversion that deliver surface water to this property, the applicant will maintain maximum flexibility in system operation. The 3 lower diversions on Billingsley Creek provide many cfs for fish propagation on this place, so the irrigation flow is only a small part of the overall system. The applicant is the last user on the stream. The transfer appears to be approvable with proper conditions.

Authority To File: While the application was filed in the name of River Grove Farms, this entity does not legally exist. River Grove, Inc, is the legal entity, so I have entered this as the applicant. River Grove is owned by Nevada banker E. Parry Thomas, who I have worked with in the past on his property north of Hailey. Peter Sturdivant is his son-in-law. Sturdivant is over-seeing this property and making the changes; Mr. Thomas is apparently not an active participant. Two of the 4 transfers filed on this farm are in the name of Sturdivant, and 2 are in the name of River Grove, apparently for tax purposes or whatever. But I have no indication that there is anything shady in all of this. I have copied deeds from other water-right files covering 36-37A & B, which are recorded to other parties. 36-106 is already in the name of River Grove Farms c/o Sturdivant. I hope that there is sufficient documentation in the file to satisfy S. O. on the ownership question. If not, Pat Brown is their lawyer.

Water Right Validity: These rights were decreed 2 years ago in the SRBA, so forfeiture is not an issue. However, this could appear be an issue with regard to the transferred portion of 36-106. Only 0.5 cfs of this right retains the original 1880 priority date; the rest has an effective priority date of 12-31-1999, since it is subordinated to all rights with earlier priorities. The transfer did not discuss this issue, so my take is that all the water being transferred is subordinated with the 1999 priority; the recorded

all the water being transferred is subordinated with the 1999 priority; the recorded priority date should be changed if possible instead of just describing this in the conditions of approval. Sturdivant gets all the water left in Billingsley Creek at his 3 lower diversions for fish propagation under 1970s priorities, so he only really has to share water with himself. It is my understanding that he does not get all the fish water he is entitled to now, so he may end up reducing that flow by a small amount in order to irrigate; upstream users would not be affected.

Injury To Other Rights: It appears that 4 cfs were never actually diverted under 36-106/8099. However, the rights were decreed with no flow limitations, so Boise has indicated that we are stuck with the situation (they can keep 2 cfs for aesthetic, 0.04 cfs for stockwater, and 1.42 cfs irrigation at the original diversion (including 0.24 cfs conveyance loss)), with a total of 2 cfs. Brockway Jr. has suggested that the total diversion rate under 106 parts/8099 be limited to 4 cfs to avoid an expansion; we may want to add 8099 as an associated right for this reason. I have been told by the watermaster that the mouth of Billingsley Creek just about dries up during summer. And Sturdivant is sometimes unable to get all the fish-propagation water that he is entitled to. So even if this transfer (splitting 106) does amount to an expansion, he is just taking a little bit of water and moving it from one pocket to another; any increase in actual diversion rate from Billingsley Creek amounts to less than 1% of the flow allocated to this farm, which is well within the tolerance of any standard measuring device.

Enlargement of Use: See Injury above. No measurable enlargement is expected.

Local Public Interest: No issues identified.

Beneficial Use/Conservation of Water Resources: These rights were decreed at several inches per acre for gravity irrigation, but all but 0.4 acres will now be irrigated with sprinklers. Pam told me that the policy is not to reduce decreed flow rates in this situation, although it is unlikely that the decreed rates will actually be diverted under sprinklers.

4. jstanton 12/30/2003 Legal Notice Remarks

Comment: This application proposes to reconfigure the place of use on this farm due to the conversion from gravity to sprinkler irrigation. Existing water rights will be tied together in a permissible place of use. The property is located west of Billingsley Creek near its confluence with the Snake River.