

MEMORANDUM

Date: June 07, 2004
To: Transfer 69381
From: jstanton
Re: Comment/Analysis

This app proposes to move water from a bt in Oakley to the applicant lawn near Birch Creek. The town lots has both Oakley Canal Co. shares and this right, and has continued to be irrigated with the canal water. The actual change occurred about 10 years ago, but no transfer was ever filed or approved until now. I have tried to get the applicant to obtain an agreement from the former owner to dry up a portion of his lot so that this transfer could be approved without causing an increase in the number of irrigated acres, but Manning has not complied. The 30-day letter ran out nearly a month ago. I therefore recommend that the application be denied as illegal under Sec. 42-222 I. C.

Authority To File: The applicant has a deed from the claimant of record to Ennis Matthews. But he has not provided a deed from Matthews to Manning for any Birch Creek rights or property formerly owned by Matthews (Matthews is now deceased, and Manning is related to Matthews somehow). We know that Manning has taken over the Matthews Brothers holdings, but have nothing official to prove it. So this is also an issue that would have to be dealt with before the transfer could be approved.

Water Right Validity: The right has been recommended for the original Stringham property in the SRBA.

Injury To Other Rights: Moving this water to dry land without taking a like amount of land out of irrigation on the original property is presumed to cause injury under the transfer statute, so cannot be allowed. With only 1/2 acre of land or less involved, the injury would be too small to measure. Other users of the Oakley Canal Co. system would be the ones affected by this transfer, as more OCC water would be used on the town bt if the Birch Creek water is moved off. Also, the watermaster for Birch Creek seemed to indicate that this water is used in a rotation scheme on other town bts also, so those users could be harmed if this water is moved to the Manning property outside of town.

Enlargement of Use: See Injury To Other Rights above.

Local Public Interest: This transfer does not appear to be in the local public interest for reasons previously described.

Beneficial Use/Conservation of Water Resource: No issues identified.

Review of the application does find a clear inconsistency with criteria set forth in Sec. 42-222 I. C., which appears to prevent approval. Although the application was not protested, it appears clear that it must be denied in order to prevent an illegal expansion.