

Comment Report

Application ID 69381

1. jstanton 8/30/2001 3:40:43 PM Special Administration Area Notes

Comment: Special Administration Areas : Water District 45-B

Exempt: N

Reason:

Doc Attached:

Explanation:

2. jstanton 8/30/2001 3:41:31 PM Additional Information Notes

Comment: Needs to be reviewed by Adjudication Staff.

3. Stanton, J E 8/30/2001 T. 69381

Comment: Previous p/u is still irrigated with other surface rights (Oakley Canal Co. shares & possibly Birch Cr. water fed into Oakley Reservoir). Applicants lawn is watered with a tap on his irrigation pipeline from Birch Cr., so this is a minor addition to that system. It may take SRBA review to straighten out what should be allowed here.

4. ameritt 10/22/2001 SRBA involved

Comment: I gave the file to Jeanie Robertson to review. She has the original claim and it still is in the name of Stringham.

5. jstanton 5/27/2004 Comment/Analysis

Comment: This app proposes to move water from a lot 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 lot 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 lots 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.