

MEMORANDUM

TO: Transfer File No. 71234

FROM: Lori Graves 

DATE: 5/13/2004

RE: Evaluation of Sufficiency of Information Submitted

Brief: Applicant proposes changing 10 acres from irrigation to ground water recharge as mitigation for a new application for permit proposing a 10 acre pond system. The site is located approximately ½ mile southwest of Star. See accompanying application for permit no. 63-31924.

Contact persons for the applicant is Steve Hannula with ERO and Jerry Kiser with Stoppello & Kiser.

Authority to File: Applicant is current owner of record. Company officers are listed in Jerry Kiser's letter dated 5/10/2004.

Water Right Validity: Right presumed to be valid based on pending SRBA recommendation.

Injury to Other Water Rights: None anticipated.

Enlargement of Use: Applicants indicate that the place of use will not change as a result of this transfer, only the nature of use. Ten acres of cropland will be converted to ponds. Alfalfa has historically been grown on the property in question. In the application for permit remarks, Steve Hannula showed that the ponds would actually consume less water than the alfalfa hay crop based on the difference between the net pond evaporation and the consumptive irrigation requirement for alfalfa.

Local Public Interest: No negative impacts are anticipated.

Beneficial Use/Conservation of Water Resources: Applicant proposed beneficial use consistent with 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 this application.

Additional Information: The application for permit was originally filed 6/10/03 without an accompanying transfer, stating that the applicants would retain 10 shares of Middleton Mill Ditch Co. water for mitigation. This was not acceptable to the department. A transfer application from the ditch company was requested and submitted

3/8/04 in the name of Middleton Mill Ditch for water right 63-125G. The share certificate attached to the transfer was in the name of Middleton Irrigation Association. I asked Jerry Kiser for documentation explaining the relationship between the applicant and the name on the share certificate. According to Jerry, Middleton Irrigation Association and Middleton Mill Ditch Co. share the same delivery system and service area. Jerry is the attorney for both entities. He said both entities should merge into one, but have yet to do so. The subject pond area happens to be under Middleton Irrigation Associations portion of the service area rather than Middleton Mill Ditch Co. As a result, Jerry submitted an amended transfer 5/11/04 for recommended right 63-198AC in the name of Middleton Irrigation Association.

Five acres of pond area in the SWNE are in applicants recommended service area and also Pioneer Ditch Company's recommended service area. Steve Hannuala contacted Pioneer Ditch Company regarding the overlap. The subject property was recently purchased by Pinewood Lakes LLC, outlined on Part 3 of the transfer, and was previously owned by Dean Sorenson. As of 5/13/04 Ada County tax info still shows the property still in the name of Dean Sorenson. Marie Kuenzli, bookkeeper for Pioneer Ditch Company, sent a fax stating that Dean Sorenson does not have shares or pay assessments to Pioneer Ditch Company for the property in question. See attached correspondence dated 4/30/2004. As a result, Mel Schulte amended the Pioneer recommended service area boundary to exclude the SWNE acres appurtenant to the five acres of proposed pond area. Pioneer Ditch Company will be sent notice.

Water right 63-2028, for irrigation water from the Kennedy Slough tributary to the Boise River, appears to overlap the proposed site. This right was not claimed in the SRBA. Steve Hannuala and Jerry Kiser guessed that because the right consists of a 1905 priority date, the original owners chose to use Association shares instead because of better priority. The Association has used the Slough as a conveyance for their water shares for many years, however, Jerry does not have anything referencing the transfer of the right to the Association in his records. Steve and Jerry feel that it would not be in the applicant's best interest to claim the private right in the SRBA at this time because of the late priority and because Middleton Irrigation Association can show that the property owners have paid and have been delivered sufficient shares for irrigation from the Association for many years via the Kennedy Slough.

Drainage District No. 2 claim 63-2406 for wastewater also appears as an overlap. This right represents return flows that are collected throughout the drainage district's service area, when available. The collected wastewater is then equitably distributed by the Boise River watermaster to delivery organizations within the drainage district. Drainage District No. 2 will be sent notice.

Watermaster comments have been requested.

Discussion: Applicants preferred changing the nature of use to groundwater recharge rather than aesthetic storage for the 10 acres of proposed pond area. As advised by the

SO, the transfer will be subject to a special condition clarifying that the recharge is for pond mitigation, not to be reclaimed for future use.

Conditions: Assuming protests are not filed and/or other information does not contradict the above analysis, and assuming it is determined the application should be approved, the conditions listed on the draft transfer approval should be applied.