

MEMORANDUM

DATE: 7/23/04

FROM: Lori Graves, John Westra JFW, S

TO: Jeff Peppersack, Pam Skaggs

RE: Transfer 71162, Brandt Agency

Don Brandt filed transfer no. 71162 to add a point of diversion to his irrigation system as a result of an N.O.V. issued by the department 2/18/04. The N.O.V. was issued because Don had drilled a replacement well without abandoning the existing well. The well(s) are represented by water rights 63-11176B and 63-3582. Tom Hamilton, owner of water right 63-11176A, protested the transfer because of the following.

The irrigation well that Don Brandt replaced, but did not abandon, originally served water rights 63-11176A, 63-11176B and 63-3582. When these rights were combined, they were limited to 3.69 cfs, which was the amount licensed in 1971 for water right 63-3582. In 1995, an exam was conducted on rights 63-11176 A & B. A booster pump had been removed from the system, which reduced the system capacity to 3.35 cfs. Don Brandt contested the licensing recommendations and the system capacity for all three rights, when combined, was settled at 3.69 cfs. Tom Hamilton filed transfer no. 69387 in 2000 on water right 63-11176A to drill his own well rather than share the original well with Mr. Brandt. Don Brandt was notified that approval of the transfer would result in the original well being limited to a maximum diversion capacity of 3.49 cfs when rights 63-11176B and 63-3582 were combined. Don Brandt protested and then withdrew his protest. Transfer no. 69387 was approved for .20 cfs for irrigation of 10 acres from a separate well, which should have resulted in limiting the diversion capacity from the original well to 3.49 cfs when rights 63-11176B and 63-3582 are combined. These two rights should have been conditioned to reflect this reduction once transfer no. 69387 was approved, but they were not because the opportunity for mutual agreement between the owners went away when Don Brandt pulled his protest. As a result, transfer 69387 was approved with the 3.69 combined right limit, which now involves two separate wells.

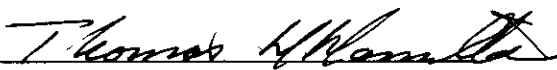
To promote a protest withdrawal and expedite processing of transfer no. 71162, Don Brandt signed the attached agreement stating that he would limit his total combined diversion rate to 3.49 cfs for right 63-11176B and 63-3582, thus allowing Mr. Hamilton to divert .20 cfs from his separate well without being subject to any combined limitations.

As a result, Tom Hamilton withdrew his protest for transfer no. 71162 and petitioned the department to change his water right no. 63-11176A per the attached signed document dated 7/22/04.

Jeff Peppersack confirmed in a telecon 7/22/04 that water right 63-11176A can be considered an associated right to transfer 71162 and changed via the transfer approval process rather than the department having to issue an order. Sharla Curtis made the necessary changes to the draft transfer approval to reflect the specifics of the signed agreement, withdrawal of protest and petition for change.

**WITHDRAWAL OF PROTEST, TRANSFER NO. 71162
PETITION TO CHANGE, WATER RIGHT NO. 63-11176A**

I, Thomas H. Hamilton, withdraw my protest to transfer application no. 71162 subject to the removal of condition no. W35 from my water right 63-11176A, which states "This right when combined with rights 63-03582 and 63-11176B shall not exceed a diversion rate of 3.69 cfs". Per the attached, signed agreement, Don Brandt of the Brandt Agency has agreed to reduce his combined flow rate to 3.49 cfs on his water rights 63-11176B and 63-3582, thus allowing me exclusive right to divert .20 cfs from my separate well without being tied to his system.


Thomas H. Hamilton


Date

RECEIVED

JUL 22 2004

WATER RESOURCES
WESTERN REGION

SCANNED
7/22/04

WATER RIGHT AGREEMENT
DON BRANDT & THOMAS H. HAMILTON

RECEIVED

JUL 22 2004

WATER RESOURCES
WESTERN REGION

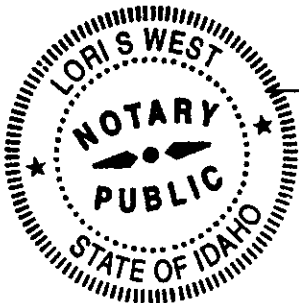
RE: Water Rights 63-11176B and 63-3582 (Brandt Agency)
Water Right 63-11176A (Hamilton)

I, Don Brandt, agree to limit my total diversion rate for my water rights 63-11176B and 63-3582 to 3.49 cfs, thus allowing Mr. Hamilton .20 cfs diversion rate, independent and not subject to a combined limit of 3.69 cfs. As a result, my rights 63-11176B and 63-3582 will be completely separate from Mr. Hamilton's right, 63-11176A, which uses a separate well and irrigation system.

Don Brandt Date 7-21-04
Don Brandt

STATE OF IDAHO)
COUNTY OF Canyon)ss.

On this 21 day of July, 2004, before me, the undersigned, a Notary Public in and for said State, personally appeared DON BRANDT known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the same.



Lori S. West

Notary Public for Idaho

Residing at: Nampa, Idaho
Comm: Expires: 4-10-09

SCANNED
2004-10-06