

MEMORANDUM

TO: EXCHANGE APPLICATION 65-3222 and 65-8290

FROM: Steve Lester 

DATE: July 26, 2004

RE: Evaluation of Sufficiency of Information Submitted

The exchange proposes to add a Middle Fork Payette River diversion to two Scriver Creek irrigation rights serving part of the Pine Tree Ranch subdivision development north of Crouch in Garden Valley. The exchange seeks to address serious maintenance problems experienced within the current system.

A protest filed by one of the current users of the irrigation system remains unresolved. **The applicant's attorney is Bryce Farris. The protestant's attorney is George Hicks, who replaced the previous attorney for the protestant. See the updated mailing list (pink sheet) in the file.**

Exchange applications cannot be processed in Workflow at this time. Issues such as data entry, correspondence flags, updated shape files etc. have not been electronically covered yet.

By the time the application file reaches the State Office to schedule a hearing, the entire file will have been scanned to either the AO12 site (see Western Pending Exchanges, "PTR 65-3222" folder) or to PowerDocs, depending on forthcoming recommendations from the State office in this regard.

*profiled to 65-3222 per S.O. guidance.
-R 7/29/04*

Summary of Information Submitted

Authority to File:

The rights were decreed in the SRBA to Pine Tree Ranch Incorporated, a separate entity from PTR Incorporated. A change of ownership dispute resulted from the protest process. The protestant filed an ownership change on "his portion of the rights." The applicant provided information to show ownership of the rights.

Ownership information is summarized in the 6/28/04 memo. John Homan concurred with the preliminary conclusion that the applicant owns the Scriver Creek irrigation water rights (7/15/04 telephone conversation). The protestant's ownership change information was returned with a 7/19/04 cover letter suggesting the issue could be raised in the future.

The applicant has authority to file the exchange application.

Water Right Validity:

The rights are presumed to be valid based on partial decrees issued within the past five year period.

Injury to Other Water Rights:

The application proposes to add 1881 and 1928 priorities to the Middle Fork Payette River upstream from the mouth of Scriver Creek. Injury with respect to other water rights will not occur if an approved exchange is properly conditioned. It remains to be seen if the application could result in injury to a user of the current system.

Enlargement of Use:

Enlargement will not occur if river water replaces an equal amount of creek water provided that the use of the former cannot exceed the amount available from the latter at any given moment.

Local Public Interest:

It remains to be seen if the application will serve the local public interest.

Local Economy of the Watershed:

It remains to be seen if the application will serve the local economy of the watershed.

Beneficial Use/Conservation of Water Resources:

The application proposes a 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. § 42-240 preventing processing of the application.

Discussion

Inactive water district 65L includes Scriver Creek. The creek remains under separate administration from water district 65¹, although the source proposed for exchange is subject to regulation under water district 65. The Payette River watermaster provided favorable comments in his 6/5/03 recommendations.

Rights 65-3222 and 65-8290 cover the same 161 acre service area. No other Scriver Creeks rights cover the same land. Some acres apparently also have Middle Fork Payette

¹ Separate streams general provision upheld in SRBA partial decrees.

River irrigation coverage. The river pump proposed by the exchange already serves Permit 65-13929 covering 9 acres within the applicant's service area. Standard overlap conditions of approval can address any overlapping rights.

Water right 65-3223 is also diverted through the same Scriver Creek P/D as the two rights proposed for exchange. But 65-3223 covers a different part of the service area than the other two rights and rightfully is not part of the exchange.

A word about the Scriver Creek P/D is needed. SRBA recommendations and shape files show that the following basin 65 rights are diverted through a single ditch for the entire area served by PTR Inc. (formerly served by Pine Tree Ranch Inc. as explained in the 6/28/04 ownership memo): 3221, 3222, 3223, 3224, 3225 and 8290. That is incorrect. The development has always used two ditches from the creek to serve separate north and south areas. This "single P/D" error persisted through the Payette River and Snake River adjudications, resulting in rights twice-decreed in error. The exchange application brought the mistake to light.

PTR Inc. filed an application for transfer to correct this longstanding error. The transfer has not been processed yet but should be soon. Allow the exchange application to proceed while the transfer application corrects the P/D error. The protestant in the exchange will be given an opportunity to comment on the transfer proposal. See the exchange application topo map for an overview of this scenario. The PTR Southside diversion serves rights 65-3221, 65-3224 and 65-3225 for land south of Scriver Creek. The PTR Northside diversion serves rights 65-3222, 65-3223 and 65-8290 for acres north of the creek. Although diverted in the same ditch as the two rights in the exchange, right 65-3223 irrigates separate acres than the other two as previously noted.

The applicant owns all the Scriver Creek irrigation water rights decreed to Pine Tree Ranch Incorporated as already noted by references to the 6/28/04 ownership memo. Disregard all previous suggestions in the exchange application file that PTR Inc. does not own irrigation rights for 4 acres in the S ½ NW ¼ S23 (north tip of the P/U common to 65-3222 and 65-8290). PTR Inc. owns the rights but not the land. Prior inquires into land ownership for those 4 acre were off-base.

The exchange proposes two systems for separate portions of the current service area. This normally implies split rights for separate systems. However, an approved exchange should allow the rights to remain whole to facilitate the ability of the applicant to merge two systems into one if future conditions prove favorable. Nothing is gained by splitting the rights in the short run, only to recombine them later if PTR Inc. can merge the systems into a single irrigation system.

Summary

1. IDWR made a preliminary determination that PTR Inc. owns the Scriver Creek irrigation rights currently in the name of Pine Tree Ranch. The protestant's competing ownership information was therefore returned to him.
2. Scriver Creek is not subject to regulation under water district 65 but is part of inactive water district 65L. The Middle Fork Payette River is subject to regulation under water district 65.
3. Rights 65-3222 and 65-8290 include a single system serving the same 161 acres. The exchange, if approved, will result in two systems at least in the short run. But the rights should not be split.
4. Existing Scriver Creek P/Ds for the entire PTR Inc. operation will be clarified in a records-correction transfer application to be processed soon. This will not involve any physical changes to the operation.
5. The rights in question have been decreed in the SRBA and migrated to the water right table in the database. An exchange, if approved, should update the water right records and corresponding shape files.